



**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
SAVANNAH, A CONDOMINIUM**

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**THIS DECLARATION** is executed effective July 12, 2004, by Amber Communities, Inc., a Colorado corporation, (hereinafter referred to as "ACT"), Declarant.

WITNESSETH:

WHEREAS, ACI, the owner of the real property situated in Arapahoe County, Colorado, described in Exhibit 1 hereto and incorporated herein by this reference, desires to submit said real property to the provisions of the Colorado Common Interest Ownership Act, C.R.S. §§ 38-33.3-101 et seq., for the purpose of creating Savannah, a Condominium, and making the improvements shown on the Map.

NOW, THEREFORE, Declarant does hereby publish and create a plan for the separate fee simple ownership of condominium units by the owners thereof in accordance with and subject to the following terms, covenants, conditions, easements, restrictions, uses, reservations, limitations and obligations, which shall be deemed to run with the land encompassing the Property and shall be a burden and a benefit to ACI, its grantees, successors and assigns, and any person acquiring or owning an interest in the real property and improvements which are subject to this Declaration, and their respective grantees, successors, heirs, executors, administrators, devisees, legal representatives and assigns.

1. **Definitions.** As used in this Declaration, unless the context otherwise requires, the terms hereinafter set forth shall have the following meanings:

a. **"Act"** means the Colorado Common Interest Ownership Act, C.R.S. §§ 38-33.3-101 et seq., as the same may be amended from time to time.

b. **"Agencies"** means and collectively refers to the Federal National Mortgage Association ("FNMA"), the Government National Mortgage Association ("GNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC"), the Department of Housing and Urban Development ("HUD"), the Veterans Administration ("VA") and any other governmental or quasi-governmental agency and any other public, quasi-public or private entity which performs (or may perform in the future) functions similar to those currently performed by such entities.

c. **"Allocated Interests"** means, with respect to each Condominium Unit, the appurtenant undivided interest in the Common Elements, the Common Expense liability and votes in the Association.

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d. **“Articles”** means the Articles of Incorporation of the Association, as the same may be amended, modified and/or restated from time to time.

e. **“Assessments”** means and includes all assessments for Common Expenses provided for in this Declaration. Assessments are classified as Common Expense Assessments, Special Assessments and Reimbursement Assessments, as provided in Paragraph 20.

f. **“Association”** means Savannah Owners Association, Inc., a Colorado nonprofit corporation, its successors and assigns, the Articles and Bylaws of which, along with this Declaration, shall govern the administration of the Project, and the members of which shall be all of the Owners.

g. **“Board of Directors”** or **“Board”** means the governing body of the Association.

h. **“Budget”** shall mean the then-current annual budget for the operations of the Association prepared by the Board pursuant to Paragraph 20.c.

i. **“Building”** means any one of the buildings erected on the Property.

j. **“Bylaws”** means the bylaws of the Association as the same may be amended, modified and/or restated from time to time.

k. **“Common Elements”** means all of the Project except the portions thereof which constitute Units, and shall include, without limitation, all parts of the Buildings or any facilities, improvements and fixtures located within a Unit which are or may be necessary or convenient to the support, existence, use, occupation, operation, maintenance, repair or safety of any Building or any part thereof or any other Unit therein. Without limiting the generality of the foregoing, the following shall constitute Common Elements:

(1) all of the land and easements which are part of the Property;

(2) all foundations, columns, girders, beams and supports of any Building;

(3) all deck areas, balconies, patios, fireplaces, doors and windows (subject to reservation for individual Owner use as Limited Common Elements, as hereafter defined and provided);

(4) the exterior walls of any Building, the main or bearing walls within any Building, the main or bearing subflooring and the roof of any Building; and

(5) all other parts of the Project necessary in common use or convenient to its existence, maintenance and safety.

Additionally, the Common Elements include, without limitation, the Limited Common Elements.

1. **“Common Expenses”** means expenditures made or liabilities incurred by or on behalf of the Association, together with allocations for reserves, and shall include, without limitation, the following items:

- (1) all sums lawfully assessed against the Owners by the Board;
- (2) expenses of administration, maintenance, repair, alteration, renovation, reconstruction or replacement of, or for additions to, the Common Elements;
- (3) expenses declared Common Expenses by provisions of this Declaration; and
- (4) other expenses agreed upon as Common Expenses by a vote of the Owners representing an aggregate ownership interest of at least fifty-one percent (51%) of the Common Elements.

m. **“Condemnation Award”** is defined as set forth in Paragraph 30.b.

n. **“Condominium Instruments”** is defined as set forth in Paragraph 32.a.

o. **“Condominium Unit”** means the fee simple interest and title in and to a Unit as designated on the Map, together with the undivided interest in the Common Elements appurtenant to such Unit and all other rights and burdens created by this Declaration.

p. **“Declarant”** means the Declarant named herein, and any successor and/or assignee designated by written notice or assignment duly executed and recorded by Declarant or by any successor or assignee so designated.

q. **“Declaration”** means this Declaration of Covenants, Conditions and Restrictions, together with any supplements or amendments hereto recorded in the Records. The Declaration may contain any matters the Declarant considers appropriate as long as such matter does not violate any applicable statute, rule or regulation.

r. **“Development Rights”** means those rights granted to or reserved by Declarant as set forth in this Declaration or the Act including, without limitation, the rights set forth in Sub-Paragraph 3.a.(8).

s. **“Development Rights Period”** means the period of time commencing on the date of this Declaration and ending on the earlier of: (i) the sale of all of the Condominium Units within the Project to third-party purchasers; (ii) the date that is seven (7) years after the date of Declarant’s execution of this Declaration; or (iii) the date that Declarant waives all

remaining Development Rights pursuant to an express written waiver executed and acknowledged by Declarant and recorded in the Records.

t. **“Eligible Mortgagee”** is defined as set forth in Paragraph 32.

u. **“Expiration of Declarant’s Appointment Period”** is defined as set forth in Sub-Paragraph 18.d.(3)(d).

v. **“First Mortgage”** means and includes a Mortgage on a Condominium Unit which has first and paramount priority under applicable law over all other Mortgages encumbering said Unit, and **“First Mortgagee”** means and includes any holder, insurer or guarantor of a First Mortgage and any grantee, beneficiary, successor or assignee of a First Mortgagee. A vendor under a Contract for Deed on a Unit shall be deemed a First Mortgagee unless said Unit is encumbered by a Mortgage.

w. **“Guest”** means, with respect to any Unit, any tenant of the Unit and any family member, guest, licensee or invitee of the Owner of the Unit or of such tenant.

x. **“Junior Mortgage”** is defined as set forth in Paragraph 27.

y. **“Limited Common Elements”** means those Common Elements which are limited to and reserved for the use of one or more but less than all of the Owners, as designated on the Map, in this Declaration or in the deed from Declarant to the initial third-party purchaser of a Unit, including but not limited to: (i) the balconies, patios, fireplaces, deck areas, equipment rooms or spaces, and air conditioning and heating equipment associated with or providing service to a Unit; and (ii) those portions of the Project treated as Limited Common Elements by operation of Sections 202(1)(b) and 202(1)(d) of the Act.

z. **“Map”** means the map referred to in Paragraph 2.

aa. **“Managing Agent”** means the person selected by the Board to perform the management and operational functions of the Association.

bb. **“Mortgage”** means an interest in real estate created by contract or conveyance which secures payment or performance of an obligation. The term includes a mortgage, deed of trust, trust deed, security deed, contract for deed and any other consensual lien or title retention contract intended as security for an obligation. **“Mortgagee”** shall include any holder, grantee or beneficiary of a Mortgage, and any successor or assignee thereof, and any insurer or guarantor of a Mortgage.

cc. **“Owner”** means the Person or Persons who own(s) a Condominium Unit in fee simple. The Declarant is the initial Owner of each Condominium Unit until that Condominium Unit is conveyed to another party, and as to Units owned by it Declarant shall enjoy the same rights and shall be subject to the same duties as other Owners. If a Condominium

Unit is sold under a contract for deed, the vendee shall be deemed the Owner of the Condominium Unit for purposes of this definition.

dd. **“Person”** means a natural person, corporation, partnership, limited liability company, association, trust or any other entity or combination thereof.

ee. **“Project”** means all of the Property, the Condominium Units, and the Buildings and improvements submitted to this Declaration.

ff. **“Records”** shall mean the real property records of Arapahoe County, Colorado.

gg. **“Reimbursement Assessment”** is defined as set forth in Paragraph 20.f.

hh. **“Rules”** means any instruments, however denominated, which are adopted by the Association pursuant to Paragraph 19.i for the regulation and management of the Project.

ii. **“Special Assessment”** is defined as set forth in Paragraph 20.e.

jj. **“Unit”** means an individual air space unit within the Project which is designated for separate ownership or occupancy. Each Unit is shown on the Map and is identified thereon with an identifying number. The exact boundaries of each Unit are the interior unfinished surfaces of the walls, floors and ceilings which mark the perimeter boundaries of the Unit and, where found along such walls, floors and ceilings, the interior surfaces of built-in fireplaces with their dampers in the closed position and the interior surfaces of windows and doors in the closed position; and each such Unit includes both the described portions of the Building in which the Unit is located, the air space so encompassed and all fixtures, improvements and interior partitions therein contained, but not any Common Elements which may be located within such Unit.

kk. **“Units That May be Included”** is defined as set forth in Paragraph 4.a.

ll. **“Utilities”** is defined as set forth in Paragraph 15.f.

2. **Map.** Declarant has recorded or shall record a map of the Project in the Records, which Map shall comply with the requirements of Section 209 of the Act. The Map, and any supplement(s) thereto, shall contain a statement of a registered land surveyor certifying that: (i) the Map fully and accurately depicts the layout, measurements and location of the Buildings and improvements, the Unit designations, the dimensions of such Units and the elevations of the floors and ceilings; (ii) the Map was prepared subsequent to completion of the improvements shown thereon; and (iii) the Map contains all of the information required by Section 209 of the Act. Except as otherwise provided in this Declaration or as otherwise required by the Act, the Map may not be amended or supplemented except with the vote or agreement of the Owners owning at least a 67% interest in and to the Common Elements. Notwithstanding the foregoing, Declarant, in its sole and absolute discretion, at any time prior to the expiration of the

Development Rights Period, shall be entitled to amend and/or supplement the Map, without the approval of the Unit Owners or any Mortgagees, as necessary to allow the exercise of the Development Rights. After said period, the Association, in its sole and absolute discretion, shall be entitled to amend and/or supplement the Map without the approval of the Owners or any Mortgagees, but subject to any restrictions set forth in this Declaration, as necessary in connection with any amendments to the Declaration. In interpreting any and all provisions of this Declaration, and in interpreting any deeds to or Mortgages of any Condominium Units, the actual physical boundaries of a Unit as constructed shall be conclusively presumed to be its boundaries.

3. **Required Elements of Declaration/Division Into Units.**

a. **Requirements of Act.** In compliance with certain of the requirements set forth in Section 205 of the Act, Declarant hereby states as follows:

(1) The name of the Project is "Savannah, a Condominium." The name of the Association is Savannah Owners Association. The Project is a condominium.

(2) The Project is located in Arapahoe County, Colorado.

(3) The real estate included in the community constitutes the Property which is legally described on Exhibit 1.

(4) The maximum number of Units that Declarant reserves the right to create is set forth in Paragraph 4.a.

(5) The description of the boundaries of each Unit created by this Declaration is set forth on the Map and in the definition of the term "Unit" in Paragraph 1 above, and each Unit's identifying number is shown on the Map.

(6) The description of any Limited Common Elements is shown on the Map and is set forth in the definition of the phrase "Limited Common Elements" in Paragraph 1 above.

(7) Portions of the Project may be allocated subsequently as Limited Common Elements in accordance with Paragraph 4 or pursuant to the deed from Declarant to the initial third-party owner of any Condominium Unit. Additionally, Declarant may designate parking spaces as Limited Common Elements in accordance with Sub-Paragraph 4.a.(4), and if so converted individual parking spaces may be allocated as Limited Common Elements appurtenant to individual Units as provided in said Sub-Paragraph.

(8) In addition to the rights reserved by the Declarant as set forth elsewhere in this Declaration, Declarant reserves the right to:

(a) create additional Units and Common Elements and to annex additional property and improvements as described in Paragraph 4.a below;

(b) create Common Elements or Limited Common Elements from portions of Units owned by it as set forth in Paragraph 4.a;

(c) subdivide or combine Units, or portions thereof, or convert Units into Common Elements as set forth in Paragraph 4.a;

(d) allocate as Limited Common Elements the parking spaces shown on the Map, and to assign them to particular Units as provided in Sub-Paragraph 4.a.(4) below;

(e) complete any improvements indicated on the Map;

(f) maintain sales offices, management and leasing offices and signs advertising the Project, all as more fully described in Paragraph 35.h;

(g) make any improvements, alterations or additions to the Project, at Declarant's expense, as Declarant may deem necessary or desirable for the marketing of the Units, and in connection therewith to allow the use of easements through the Common Elements by Declarant's agents and contractors; and

(h) designate, appoint or remove any officer of the Association or any member of the Board as specified in Paragraph 18, the Articles or the Bylaws.

The rights specified in this Sub-Paragraph 3.a.(8) apply to the Project and must be exercised prior to the expiration of the Development Rights Period.

(9) The allocation to each Unit of undivided interests in the Common Elements is set forth in Paragraph 3.b. The allocation to each Unit of Common Expenses is set forth in Paragraph 20.a. The allocation to each Unit of votes in the Association is set forth in Paragraph 18.c.

(10) Restrictions on the use and occupancy of Units are set forth throughout this Declaration. The amount a Unit Owner is entitled to receive upon any condemnation or casualty loss of such Owner's Unit or the Project or upon termination of the condominium is set forth in Paragraphs 29 and 30.

(11) The recording data for recorded easements and licenses appurtenant to, or included in the Project, or to which any portion of the Project is or may become subject by virtue of a reservation in this Declaration, is set forth on Exhibit 3.

(12) Notice of matters affecting the Project shall be given to Owners in accordance with Paragraph 35.c.

b. **Creation of Condominium Units.** Declarant does hereby submit the Project to condominium ownership pursuant to the Act, and the Project is hereby divided into twenty-four (24) Units, each consisting of a separate fee simple estate in a particular Unit, and an appurtenant undivided interest in the Common Elements. The undivided interest in the Common Elements appurtenant to each Unit is set forth on Exhibit 2 attached hereto and incorporated herein by reference. The allocation of undivided interests in the Common Elements has been computed for each Unit as a percentage determined by a fraction, the numerator of which is one (1) and the denominator of which is the total number of Units. The Project being created by this Declaration is being created only by recording this Declaration and the Condominium Map, executed in the same manner as a deed and, if a cooperative, by conveying the real estate subject to the Declaration to the Association. The Declaration must be recorded in every county in which any portion of the Project is located and must be indexed in the grantee's index in the name of the Project and in the name of the association and in the grantor's index in the name of each person executing the Declaration. The Project is not created until the plat or map is recorded.

4. **Right to Combine and Subdivide Units/Creation of Units, Common Elements and Limited Common Elements.**

a. **Declarant Rights.**

(1) **Combination and Subdivision.** Declarant hereby reserves the right to: (A) physically combine the total area or space of one Unit with the total area or space of one or more adjacent Units; (B) physically combine a part of or combination of parts of the area or space of one Unit with a part of or combination of parts of the area or space within one or more adjacent Units; (C) physically subdivide a Unit into two or more Units; (D) redesignate and reallocate Limited Common Elements in connection with any combination or subdivision of any Unit(s); and (E) withdraw property from the Project. Declarant shall not exercise its rights pursuant to this Sub-Paragraph 4.a.(1) unless it is the Owner of the Unit(s) to be subdivided or combined, or the property to be withdrawn, nor shall Declarant exercise such rights without the written consent of any First Mortgagee having an interest in said Unit or Units. In no event may any subdivision of Units cause the total number of Units on the Property to exceed 195 (the "Units That May Be Included").

(2) **Create and Convert Common Elements.** Declarant reserves the right to convert any Units owned by it into Common Elements.

(3) **Additional Units and Common Elements.** Declarant reserves the right to create additional Units, Common Elements, and Limited Common Elements in the locations identified on the Map.

(4) **Parking Spaces.** Declarant reserves the right at any time and from time to time, either by means of a deed from Declarant to a third-party purchaser or an appropriate amendment of this Declaration or the Map, to allocate as Limited Common Elements



appurtenant to a particular Unit or particular Units, or to reserve for visitor parking, any or all of the parking spaces shown on the Map. No assurance is given that any parking spaces will be so allocated. Subject to the restriction specified in Paragraph 5 herein, after the expiration of the Development Rights Period, the Association shall have the right, by appropriate recorded document, to allocate as Limited Common Elements appurtenant to a particular Unit or particular Units, or to reserve for visitor parking, any or all of the parking spaces shown on the Map. Additionally, Declarant reserves the right (but shall have no obligation) to construct garages or carports over or upon any parking spaces, and to allocate the same as Limited Common Elements (without any obligation to do so) in the manner provided in this Sub-Paragraph.

(5) **Annexation of Additional Property.** Declarant shall have the absolute right, but not the obligation, to annex to the land and improvements described in this Declaration and the Map, and thereby submit to the provisions of this Declaration, the land described in Exhibit 4 attached hereto and incorporated herein by this reference, or any portions thereof from time to time designated by Declarant, together with the improvements constructed or to be constructed thereon. It is the intention of Declarant that the lands described in Exhibit 4 may be annexed to the land subject to this Declaration in additional phases. Such phases may be added by Declarant either in the aggregate or on a phase-by-phase basis, by a portion of a phase, or any combination thereof, with the result being that the Project may be increased up to the maximum number of Units That May Be Included as stated in this Declaration, or such lesser number of Units as Declarant may desire. Any such annexation shall be accomplished by the recording of appropriate supplements to this Declaration and the Map executed by Declarant in compliance with Sections 209 and 210 of the Act and recorded in the Arapahoe County, Colorado, records. Upon the annexation of any additional Units to this Declaration pursuant to this Sub-Paragraph, the undivided interest in the Common Elements, the percentage responsibility for Common Expenses, and the size of the vote appurtenant to each existing and each additional Unit shall be equal to a fraction, the numerator of which is one (1), and the denominator of which is the total number of Units. The interests in the Common Elements as so revised shall be reflected in an amended Exhibit 2 which shall accompany the supplement to this Declaration executed and recorded by Declarant in connection with the annexation in question.

(6) **Amendments, Map Supplements and Other Procedures.** If Declarant exercises one or more of its rights as set forth above after the Map has been recorded, it shall cause a supplemental Map or other appropriate document to be recorded in the Records reflecting the same, and shall record an amendment, if necessary, to Exhibit 2 attached hereto reflecting the same. Upon any physical combining of Units, the resulting Unit shall be allocated the undivided interests in the Common Elements appurtenant to the Units so combined. Upon any such physical combining of Units to create a single Unit, the Owner of such combined Unit shall be responsible for the assessments for Common Expenses allocable to the Units so combined, as determined pursuant to Paragraph 20.a. Declarant reserves the right to designate, as additional Limited Common Elements appurtenant to such combined Unit, any walls, floors or other structural separations between the Units so combined, or any space which would be occupied by such structural separations but for the combination of such Units; provided, however, that such walls, floors or other structural separations or such space shall automatically become Common Elements if the combined Units become subject to separate ownership in the

future. Upon any subdivision of any one or more Units to create additional Units, the resulting Units shall be allocated the undivided interests in the Common Elements of the Units so subdivided, which undivided interests shall be allocated between or among such Units as Declarant shall determine, and such determination shall be final and conclusive.

(7) **Expiration of Reserved Rights.** The reserved rights of Declarant set forth in this Paragraph 4.a shall terminate upon the expiration of the Development Rights Period. Pursuant to Section 205(1)(i) of the Act, Declarant states that: (i) its rights under this Paragraph 4.a or under any other provision of this Declaration may be exercised with respect to different Units at different times; (ii) no assurances are made as to the boundaries of the Units that may be subject to Declarant's rights under this Paragraph 4.a or under any other provision of this Declaration or as to the order in which Units, if any, may be subjected to such rights; and (iii) if Declarant exercises any rights as to any Units pursuant to this Paragraph 4.a or under any other provision of this Declaration, such rights may, but need not, be exercised as to all or any other portion of the Project.

(8) **Power of Attorney.** Declarant hereby reserves an irrevocable power of attorney, coupled with an interest, to execute, acknowledge and record such further instruments and to do such further acts as may be required from time to time to accomplish the purposes of this Paragraph 4.a., including any necessary amendments to this Declaration or the Map. Each Owner and Mortgagee shall be deemed to have consented to and approved of such action by Declarant, except to the extent Mortgagee approval is expressly required in accordance with Paragraph 4.a. above. Neither the Association nor any Owner may take any action or adopt any Rule that will interfere with or diminish any right of Declarant pursuant to this Paragraph 4.a. or any other rights reserved by Declarant in accordance with this Declaration.

b. **Unit Owner Rights.** Each Owner of a Unit shall have the right to combine two or more adjacent Units, or to divide two or more Units which have previously been combined by Declarant in accordance with Paragraph 4.a or by an Owner in accordance with this Paragraph 4.b. Except as provided in the foregoing sentence, there may be no other division or combination of Units or relocation of boundaries of adjacent Units by Owners. A combination or division of Units by an Owner shall require the consent of the Association and shall be effected in accordance with the procedures set forth in the Act. The exercise of the rights granted in this Paragraph 4.b shall be subject to the prior written consent of each Mortgagee having an interest in any such combined or divided Units. Any previously combined Units which are subsequently divided shall be divided so that the revised boundaries are the same as those that originally existed between such Units. If Units are combined, the undivided interest in the Common Elements appurtenant to the combined Unit shall be the sum of the undivided interests in the Units that were combined. Any previously combined Units which are later divided shall be reinstated to the undivided interests in the Common Elements, the votes, and the percentage of Common Expenses, as applicable, which they had prior to the combination.

5. **Limited Common Elements.** Subject to the definition thereof and the rights granted in Paragraph 4 above, the Limited Common Elements, except those specified under Section 202(1)(b) and 1(d) of the Act, shall be designated herein, on the Map, or in a deed from

Declarant as appurtenant to one or more particular Condominium Units. Any door, window, balcony, patio, deck or fireplace which is accessible from, associated with or which adjoin(s) a Unit and which is identified as a Limited Common Element on the Map and designated as appurtenant to a particular Condominium Unit or Condominium Units shall, without further reference thereto, be used in connection with the Unit or Units to which it is appurtenant to the exclusion of the use thereof by the other Owners, except by invitation. Those portions of the Common Elements shown as parking spaces that are allocated to a particular Unit on the Map shall be allocated as Limited Common Elements in accordance with Sub-Paragraph 4.a.(4) above. Those portions of the Common Elements shown as parking spaces that are not allocated to a particular Unit on the Map may be assigned by a Rule adopted by the Board, or may be limited by Rule to parking for visitors only. Except as otherwise permitted by Paragraph 4, the allocation of a Limited Common Element may not be altered without the consent of the Unit Owners and First Mortgagees whose Units are affected, and then only with the approval of the Board of Directors and upon compliance with Section 208 of the Act. In order to reallocate limited common elements between or among units, the unit owners of those units, as the applicants, must submit an application for approval of the proposed reallocation to the Board of Directors, which application shall be executed by those unit owners and shall include:

a. The Proposed form for an amendment to the Declaration as may be necessary to show the reallocation of limited common elements between or among units;

b. A deposit against attorney fees and costs which the association will incur in reviewing and effectuating the application, in an amount reasonably estimated by the Board of Directors;

c. Such other information as may be reasonably required by the Board of Directors. No reallocation shall be effective without the approval of the Board of Directors. The reallocation shall be effectuated by an amendment signed by the association and by those unit owners between or among whose units the reallocation is made, which amendment shall be recorded as provided in Section §38-33.3-217(3). All costs and attorney fees incurred by the association as a result of the application shall be the sole obligation of the applicants.

6. **Inseparability of a Condominium Unit.** An Owner's undivided interest in the Common Elements, including such Owner's interest in any appurtenant Limited Common Elements, cannot and shall not be separated from the Unit to which such interest is appurtenant, and shall be deemed to be conveyed or encumbered with the Unit even though the interest is not expressly mentioned or described in a deed or other instrument. Any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the Common Elements made without the Unit to which that interest is allocated shall be void.

7. **Description of Condominium Unit.**

a. **Prior to Recording.** Every contract for the sale of a Condominium Unit entered into prior to the recording of the Map and this Declaration in the Records may legally describe a Condominium Unit by its identifying Unit number, followed by the words "Savannah,

a Condominium,” without further reference to the Declaration and the Map to be recorded in the Records.

b. **Subsequent to Recording.** Subsequent to the recording of the Declaration and the Map, every deed, lease, Mortgage, will and other instrument affecting title to a Condominium Unit shall legally describe a Condominium Unit by its identifying Unit number followed by the words “Savannah, a Condominium, Arapahoe County, Colorado, in accordance with and subject to the Declaration of Covenants, Conditions and Restrictions of Savannah, recorded on \_\_\_\_\_, 2004, as Reception No. \_\_\_\_\_, and the Map recorded on \_\_\_\_\_, 2004, as Reception No. \_\_\_\_\_, Arapahoe County, Colorado records.” Every such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect not only the Unit, but also the undivided interest in the Common Elements appurtenant thereto and the right to the use of the Limited Common Elements appurtenant thereto. Each such description shall be construed to include a non-exclusive easement for ingress and egress throughout and for use of the Common Elements which are not Limited Common Elements; the right to the use of the appurtenant Limited Common Elements; and the other easements, obligations, limitations, rights, encumbrances, covenants, conditions and restrictions created in this Declaration.

c. **Reference Includes Amendments.** The reference to the Map and Declaration in any instrument shall be deemed to include each and every supplement or amendment to the Map or Declaration, without specific reference thereto.

8. **No Partition.** The Common Elements shall be owned in common as tenants-in-common by all of the Owners and shall remain undivided, and no Owner or other Person shall bring any action for partition or division of the Common Elements. Similarly, no action shall be brought for partition of a Unit or a Condominium Unit between or among the Owners thereof. Each Owner, by virtue of his ownership of a Condominium Unit, hereby expressly waives any and all rights he may have to institute or maintain an action for partition or any other division of a Condominium Unit or the Common Elements, except as otherwise expressly permitted by Paragraph 4.b or Sub-Paragraph 13(b).

9. **Separate Taxation.** Each Condominium Unit shall be deemed to be a parcel and shall be subject to separate assessment and taxation by each assessing unit and special district for all types of taxes authorized by law, including ad valorem levies and special assessments. The lien for taxes assessed to any Condominium Unit shall be confined to that Condominium Unit. No forfeiture or sale of any Condominium Unit for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Condominium Unit. If such taxes or assessments for any year are not separately assessed to each Owner, but rather are assessed on the Project as a whole, then each Owner shall pay his proportionate share thereof in accordance with his ownership interest in the Common Elements, and in said event such taxes or assessments shall be a Common Expense. Without limiting the authority of the Board provided for elsewhere herein, the Board shall have the authority to collect from the Owners their proportionate share of taxes or assessments for any year in which taxes are assessed on the Project as a whole.

10. **Title.** A Condominium Unit may be held and owned by more than one Person as joint tenants or tenants in common, or in any real property tenancy relationship recognized under the laws of the State of Colorado.

11. **Certain Work Prohibited.** No Owner shall undertake any work, improvements or alterations in his Unit which would jeopardize the soundness, health or safety of the Project, impair the structural integrity, electrical systems, or mechanical systems or lessen the support of any portion of the Project, or impair an easement or hereditament thereon or thereto. No Owner shall enclose, by means of screening or otherwise, any balcony, deck or patio which is accessible from, associated with and which adjoins a Unit without having first obtained the prior written approval of the Board (which approval may be withheld for any reason) for such enclosure or partition and for the materials, plans and specifications for such enclosure or partition. Structural alterations shall not be made by an Owner to the exterior portions of his Unit or to any Building, nor shall an Owner make any changes to the water, gas or steam pipes, electric conduits, plumbing or other fixtures, nor shall an Owner remove any additions, improvements or fixtures from any Building, without in any such case having first obtained the prior written approval of the Board (which approval may be withheld for any reason). No Owner may change the appearance of any of the Common Elements, including any Limited Common Elements appurtenant to such Owner's Unit, which are visible from the exterior of any Building or such Unit without the Association's approval.

12. **Liens Against Condominium Units -- Removal From Lien -- Effect of Part Payment.**

a. **Limitation on Units Affected.** No labor performed or materials furnished with the consent or at the request of an Owner of a particular Condominium Unit, or his agent, contractor or subcontractor, shall be the basis for the filing of a lien pursuant to law against the Condominium Unit or other property of another Owner not expressly consenting to or requesting the same, except that express consent shall be deemed to be given by the Owner of any Condominium Unit to the Managing Agent or the Board in the case of emergency repairs. Labor performed or materials furnished for the Common Elements, if duly authorized by the Managing Agent or the Board of Directors in accordance with the Declaration or Bylaws, shall be deemed to be performed or furnished with the express consent of each Owner and shall be the basis for the filing of a lien pursuant to law against each of the Condominium Units in the Project.

b. **Partial Release.** If a lien is effected against two or more Condominium Units, the Owners of the separate Condominium Units may remove their Condominium Units from said lien by payment of the amount attributable to each of the Condominium Units affected. The amount of the payments allocable to the affected Condominium Units shall be apportioned based upon their respective percentage interests in the Common Elements. Subsequent to payment, discharge or other satisfaction, the Condominium Unit shall be released from the lien paid, satisfied or discharged. Partial payment, satisfaction or discharge shall not prevent the lienor from proceeding to enforce his rights against any Condominium Unit not so released or discharged.

c. **Indemnity.** Each Owner shall indemnify and hold each of the other Owners and the Association harmless from and against liability or loss arising from any claim resulting from or any lien for labor performed or materials furnished in connection with any work on such Owner's Condominium Unit. At the written request of any Owner, or upon action by the Board of Directors on its own initiative, the Association shall enforce such indemnity by collecting from the Owner of the Condominium Unit on which the labor was performed or materials furnished the amount necessary to discharge any such lien assessed against the Condominium Unit of another Owner, and all costs incidental thereto, including reasonable attorney's fees. If not paid within ten days after the Association's request for payment, the Association may proceed to collect such amounts in the manner provided herein for collection of assessments for the purpose of discharging the lien.

13. **Use & Occupancy of Units.**

a. **Permitted Uses.** Except as otherwise permitted by this Paragraph 13.a, each Unit shall be used for residential purposes only, and no such Unit shall be occupied for living or sleeping purposes by more persons than it was designed to accommodate safely. For the purposes of the foregoing sentence, each Unit shall be deemed to have been designed to accommodate safely a maximum of two occupants per bedroom. No Unit shall be used at any time for any business or commercial activity, except as follows: (i) the Owner thereof may lease or rent such Unit for private residential or living purposes (subject to Paragraph 28.i); (ii) the Owner or tenant thereof may use a portion of the Unit as a home office if and to the extent permitted by applicable law; (iii) Declarant or its nominee or agents may use any Unit(s) for such purposes as may be authorized by Paragraph 35.h below; and (iv) the Association shall have the right, but not the obligation, to purchase, own, or lease one or more Condominium Units for a manager's residence or office or for such other purposes as the Association may deem appropriate. Further, the Association and/or Managing Agent may maintain offices within the Common Elements, provided the Association's right to do so during the Development Rights Period shall be subject to Declarant's prior written approval.

b. **General Provisions.** Each Owner shall be entitled to the exclusive ownership and possession of his Unit. The use of all Units shall be subject to: (i) all applicable governmental rules, regulations, laws, ordinances and restrictions, and (ii) such Rules as may be adopted by the Association from time to time.

14. **Use of Common Elements and Limited Common Elements.**

a. **Use of Common Elements.** Subject to this Declaration and the Rules, each Owner and each Owner's Guests may use the Common Elements in accordance with the purposes for which they are intended, without hindering or encroaching upon the lawful rights of the other Owners or their Guests.

b. **Limited Common Elements.** Certain portions of the Common Elements are reserved for the exclusive use of certain Owners and their Guests, and such items and areas

are referred to as Limited Common Elements. The Limited Common Elements shall be appurtenant to the Units to which they have been reserved pursuant to this Declaration (see Exhibit 5), the Map, or in a deed from Declarant, and no reference thereto shall be required to be made in any subsequent deed or in any Mortgage, instrument of conveyance or other instrument describing any Unit.

c. **Use of Limited Common Elements.** Subject to this Declaration and the Rules, only the Owner of a Unit, and such Owner's Guests, shall have the right to use the Limited Common Elements appurtenant to such Owner's Unit, without hindering or encroaching upon the lawful rights of the other Owners or their Guests.

d. **Restrictions; Rules.** Subject to the procedures set forth in Paragraph 19i below, the Association and/or the Board may from time to time adopt Rules governing the use of the Common Elements, but such Rules shall be uniform and non-discriminatory in both intent and effect. Each Owner, by accepting a deed or other instrument of conveyance for a Unit, agrees to be bound by any Rules so adopted. In addition, Declarant, in its sole and absolute discretion, at any time prior to the expiration of the Development Rights Period, shall be entitled to adopt and/or amend any such Rules without the approval of any Unit Owners or Mortgagees as necessary to allow the exercise of the Development Rights.

15. **Various Rights and Easements.**

a. **Owners' Easements for Access, Support and Utilities.** Except as otherwise expressly provided in this Declaration, each Owner and each Owner's Guests shall have a non-exclusive easement for access between his Unit and the roads and streets adjacent to the Project and the roadways and driveways within the Project. Each Owner shall have a non-exclusive easement in, on and over the Common Elements, including the Common Elements within the Unit of another Owner, for horizontal and lateral support of his Unit, and for utility service to that Unit, including without limitation water, sewer, gas, electricity, telephone and television service.

b. **Association Rights.** The Association, the Board and the Managing Agent, and their respective agents and contractors, shall have a non-exclusive right and easement to make such use of and to enter into or upon the Common Elements, the Limited Common Elements and the Units as may be necessary or appropriate for the performance of the duties and functions which they are obligated or permitted to perform under this Declaration.

c. **Recorded Easements.** The Project is now or may hereafter be subject to the easements, licenses, and other recorded documents, or any of them, set forth on Exhibit 3 attached hereto and incorporated herein by this reference. Additionally, the Project shall be subject to the easements as shown on any recorded plat of the Property, or any portion thereof, and as shown on the Map.

d. **Easements for Encroachments.** If any part of the Common Elements encroaches or shall hereafter encroach upon a Unit, an easement for such encroachment and for

the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Elements, or upon another Unit, the Owner of that Unit shall and does have an easement for such encroachment and for the maintenance of same. Such encroachments shall not be considered to be encumbrances either on the Common Elements or on a Condominium Unit for purposes of marketability of title or otherwise. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of any Building, by error in the Map, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

e. **Easements for Units for Repair, Maintenance and Emergencies.** Some of the Common Elements are or may be located within a Unit or may be conveniently accessible only through a particular Unit. The Association, Board, Managing Agent, and each Owner shall have a non-exclusive right and easement, which may be exercised for any Owner by the Association, the Board, or the Managing Agent, as his agent, for access through each Unit and to all Common Elements, from time to time, during such reasonable hours as may be reasonably necessary for the maintenance, repair or replacement of any of the Common Elements located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Elements or to another Unit. When access to a Unit is required, at least twenty-four (24) hours prior notice shall be provided to the occupants of such Unit, except when said occupants have no objection to earlier entry and except in the case of an emergency. The cost to repair damage to the interior or any part of a Unit resulting from the maintenance, repair, emergency repair or replacement of any of the Common Elements, or as a result of repairs within another Unit, at the instance of the Association, the Board or the Managing Agent, shall be a Common Expense of all of the Owners. No diminution or abatement of Common Expense assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements or from action taken to comply with any law, ordinance or order of any governmental authority. Restoration or repair of the damaged improvements shall be to substantially the same condition as they existed prior to the damage. Notwithstanding the foregoing, if any such damage is the result of the activities of any Owner, or said Owner's Guests, then the Owner shall be responsible for all costs and losses incurred as a result of such damage, including any expenses incurred to avoid or repair such damage and any losses suffered by other Owners as a result of such damage.

f. **Utilities.** A blanket easement upon, across and through the Common Elements for the installation, replacement, repair and maintenance of utilities (herein "**Utilities**"), including but not limited to water, sewer, gas, telephone, electricity, heating, ventilating, air conditioning, computer, cable, and master television antenna or cable or satellite television systems, if any. By virtue of this blanket easement, it shall be expressly permissible to erect and maintain the facilities, equipment and appurtenances on the Common Elements necessary to operate, repair, and maintain the Utilities. Further, Declarant, during the Development Rights Period, or the Association, after the expiration of the Development Rights Period, may grant easements over the Common Elements for the installation, operation, maintenance, repair, renovation and reconstruction of any Utilities necessary or desirable for the Project, without the need for any further approval from the Owners or any Mortgagee. The easements provided for in this Paragraph 15.f. shall not affect, avoid, extinguish or modify any other recorded easement(s)



affecting the Common Elements, nor shall these easements unreasonably interfere with the use and enjoyment of any Unit by the Owner thereof.

g. **Declarant's Rights Incident to Completion of the Project and Sale of Units.** Declarant hereby retains a right to use, and an easement for ingress and egress over, in, upon, under and across, the Common Elements, including the right to store materials thereon, and the right to make such other use of the Common Elements as may be reasonably necessary or incidental to: (i) any proposed construction or renovation of the Project and the sale or lease of the Units; (ii) the exercise of Declarant's Development Rights; and (iii) discharge of Declarant's obligations; provided, however, no such rights shall be exercised by Declarant in such a way as to unreasonably interfere with any Owner's or Guest's occupancy, use or enjoyment of, or access to, such Owner's Unit or the Common Elements. The rights of Declarant under this Paragraph shall terminate upon expiration of Development Rights Period.

h. **Maintenance Easement.** An easement is hereby granted to the Association, its officers, directors, agents, employees, contractors and assigns, and to the Managing Agent, upon, across, over, in and under the Common Elements, together with the right to make such use of the Common Elements as may be necessary or appropriate to perform the duties and functions which the Association is obligated or permitted to perform pursuant to this Declaration, including the right to construct, reconstruct, relocate and maintain on the Common Elements maintenance and storage facilities for use by the Association.

i. **Emergency Easement.** A non-exclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons, and to any security personnel now or hereafter servicing the Project (without implying any obligation on the part of Declarant or the Association to provide for security), to enter upon all streets, roads and driveways and Common Elements located in the Project in the performance of their duties.

j. **Easements Deemed Appurtenances.** The easements, uses and rights herein created for an Owner shall be appurtenant to the Condominium Unit of that Owner, and all conveyances of and other instruments affecting title to a Condominium Unit shall be deemed to grant and reserve the easements, uses and rights provided for herein, even though no specific reference to such easements, uses and rights appears in any such conveyance.

16. **Owners' Maintenance Responsibility.** Except as otherwise provided in this Declaration, each Owner shall be responsible for the maintenance, repair, alteration, remodeling and replacement of said Owner's Unit. For purposes of maintenance, repair, replacement, alteration and remodeling, an Owner shall be deemed to own and shall have the right and obligation to maintain, repair, alter and remodel, the interior non-supporting walls, and the materials (such as, but not limited to, plaster, gypsum dry wall, paneling, wallpaper, paint, wall and floor tile, and flooring, but not including the sub-flooring) making up the finished surfaces of the perimeter walls, ceilings and floors within the Unit, and the interior surface of the perimeter doors and windows (including the interior glass surface but excluding the glass itself), and the interior finished surfaces of any patio, balcony, or deck enclosure which is a Limited Common

Element appurtenant to such Unit. Except as otherwise provided in the immediately preceding sentence, repair and maintenance of the patios, balconies and decks shall be performed solely by the Association, and the expense thereof shall be a Common Expense unless the repair or replacement is required as a result of the negligence of a Unit Owner or his Guests, in which event the Unit Owner shall be responsible for the expense. Further, repair or replacement of the perimeter windows and doors of a Unit shall be performed solely by the Association, and the expense thereof shall be assessed to the Owner of the affected Unit as a Reimbursement Assessment, and shall be due within 30 days after notice to the affected Owner of the amount of such assessment. No Owner shall make any changes or alterations of any type or kind to the exterior surfaces of the perimeter doors or windows to his Unit nor to any of the Common Elements (including, but not limited to, the exterior portions of his Unit, any landscaped areas located outside of his Unit, and any windows, doors or balcony doors), nor shall any Owner make any changes or alterations to the exterior or interior surfaces of or otherwise attach improvements to any patio, balcony or deck appurtenant to such Owner's Unit that is visible from the exterior of any Building without the prior written consent of the Association. The foregoing restrictions shall, without limitation, apply to painting, staining, addition of detailing, changing of doors and windows, planting of gardens, hedges and shrubs, construction of fences, walls and benches without the prior written consent of the Association. Owners shall not be deemed to own the Utilities running through their Units which serve one or more other Units, except as a tenant in common with the other Owners. Each Owner shall have the obligation to replace any finishing or other materials removed with materials of similar quality or better quality than those which were removed. An Owner shall maintain and keep his Unit in good repair and in a clean, safe, attractive and sightly condition, including the fixtures and the surfaces of the doors and windows of the Unit. Also, an Owner shall keep in a neat and clean condition the fireplace within his Unit and the interior surfaces of any deck, balcony and/or patio areas adjoining and/or leading to his Unit which are Limited Common Elements appurtenant to such Owner's Unit. Except as previously provided, the Association shall be responsible for repair, replacement and maintenance of all Limited Common Elements. All fixtures, appliances and equipment installed within a Unit, commencing at a point where they connect to the Utilities, shall be maintained and kept in repair by the Owner thereof. If any Owner fails to carry out or neglects the responsibilities set forth in this Paragraph, the Board or the Managing Agent may fulfill the same and charge such Owner therefore. Any expense incurred by an Owner under this Paragraph shall be the sole expense of said Owner.

17. **Compliance With Provisions of Declaration, Articles and Bylaws of the Association.** Each Owner shall comply strictly with, and shall cause each of his Guests to comply strictly with, all of the provisions of this Declaration, the Articles and Bylaws, and the Rules, decisions and resolutions of the Association or the Board, as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action or actions to recover sums due, for damages and/or for injunctive relief, along with costs of suit and reasonable attorneys' fees, maintainable by the Managing Agent or Board of Directors in the name of the Association on behalf of the Owners, or, in a proper case, by an aggrieved Owner. Such failure also may result in the imposition of a Reimbursement Assessment pursuant to Paragraph 20. No fine shall be levied unless the Association gives the Owner at least ten days prior written notice and an opportunity to be heard. Notwithstanding any contrary provision

contained in this Declaration, in no event may the Association commence any action or proceeding seeking either an unspecified amount of damages or damages in excess of \$25,000.00, unless the following conditions are satisfied: (a) the decision to commence such action or proceeding shall be taken at an annual or special meeting of the Association; (b) a budget for such litigation, including all fees and costs assuming both trial and applicable appeals, shall have been prepared by the attorneys who will be engaged by the Association for such purpose, and shall have been mailed or delivered to all Owners and posted at the principal office of the Association at least 30 days prior to such meeting; and (c) at such meeting Owners representing an aggregate ownership interest of 75% or more of the Common Elements shall approve the decision to commence, and the proposed budget for, such action or proceeding, and shall concurrently approve the imposition of a Special Assessment to fund the costs of such action or proceeding in accordance with the approved budget. The Association shall be authorized to expend funds for such proceeding in excess of the amount contemplated by the approved budget only after an amended budget has been approved in accordance with the procedures specified in the foregoing subparts (a), (b) and (c). The procedural requirements set forth in this Paragraph 17, however, shall not apply to any action to collect or otherwise enforce Assessments and any related fines, late charges, penalties, interest or costs and expenses, including reasonable attorneys' fees, in an amount of \$25,000.00 or less. All of the costs and expenses of any action or proceeding requiring the approval of the Owners in accordance with the preceding sentence shall be funded by means of a Special Assessment pursuant to Paragraph 20.f below, and in no event may the Association use reserve funds or incur any indebtedness in order to pay any costs and expenses incurred for such purpose. Further, if the Association commences any action or proceeding against a particular Owner or particular Owners requiring the approval of the Owners in accordance with the foregoing, the Owner(s) who are being sued shall be exempted from the obligation to pay the Special Assessment(s) levied in order to pay the costs and expenses of such action or proceeding.

18. **The Association.**

a. **General Purposes.** The Association is a Colorado non-profit corporation formed to manage the Common Elements and to perform its functions as provided in this Declaration in furtherance of the interests of the Owners.

b. **Membership.** The Owner of a Condominium Unit shall automatically become a member of the Association. Said membership is appurtenant to the Condominium Unit of said Owner and shall automatically pass with fee simple title to the Condominium Unit. Each Owner automatically shall be entitled to the benefits and shall be subject to the burdens of such membership. If the fee simple title to a Condominium Unit is held by more than one Person, each such Person shall be a member of the Association. Memberships in the Association shall be limited to Owners of Condominium Units in the Project or, following termination of the Project, all former Owners entitled to distributions of proceeds under this Declaration or Section 218 of the Act or their respective heirs, personal representatives, successors or assigns.

c. **Voting.** Each Owner shall be entitled to vote on all matters that are subject to a vote by the Owners. The size of each Owner's vote shall be equal to the percentage

interest in the Common Elements appurtenant to such Owner's Condominium Unit(s). The vote for each particular Condominium Unit shall be cast as one collective vote, as the Owners of the Unit agree. If the Owners do not agree when called upon to vote, the Owners will be treated as having abstained. No votes allocated to any Condominium Unit(s) owned by the Association may be cast.

d. **Board of Directors.** The affairs of the Association shall be managed by a Board of Directors in accordance with the provisions of this Declaration, the Articles and Bylaws.

(1) **Definitions.** For purposes of this Paragraph 18.d, the following terms shall be defined as follows:

(a) **"Phase I Period"** shall mean the period commencing on the date of this Declaration and expiring 60 days after the date when Declarant has conveyed 25% of the Units That May Be Included within the Project to Owners other than Declarant.

(b) **"Phase II Period"** shall mean the date commencing upon the expiration of the Phase I Period and expiring 60 days after the date when Declarant has conveyed 50% of the Units That May Be Included within the Project to Owners other than Declarant.

(c) **"Phase III Period"** shall mean the date commencing upon the expiration of the Phase II Period and expiring 60 days after the date when Declarant has conveyed 75% of the Units That May Be Included within the Project to Owners other than Declarant.

(2) **Number of Directors.** The Board of Directors shall initially consist of three members. The number of Directors may be changed as provided in the Bylaws of the Association.

(3) **Election of Directors.** Members of the Board of Directors shall be elected in the following manner:

(a) Subject to Sub-Paragraph 18.d.(3)(d) below, Declarant shall be entitled to appoint and remove, in its sole and absolute discretion, all members of the Board of Directors from the date the Association is created until the expiration of the Phase I Period.

(b) Subject to Sub-Paragraph 18.d.(3)(d) below, following the expiration of the Phase I Period and until the expiration of the Phase II Period, the Owners other than Declarant shall be entitled to elect at least one member of the board of Directors of the Association and not less than twenty-five percent (25%) of the members

of such Board, and Declarant shall be entitled to appoint and remove, in its sole and absolute discretion, the remaining members of the Board.

(c) Subject to Sub-Paragraph 18.d.(3)(d) below, following the expiration of the Phase II Period and until the expiration of the Phase III Period, the Owners other than Declarant shall be entitled to elect not less than one-third of the members of the Board of Directors of the Association and Declarant shall be entitled to appoint and remove, in its sole and absolute discretion, the remaining members of the Board of Directors.

(d) Declarant's right to appoint and remove members of the Board of Directors shall terminate upon the earlier to occur of the following: (i) the expiration of the Phase III Period; (ii) two years after the last conveyance of a Unit by Declarant in the ordinary course of business to an Owner other than Declarant; (iii) two years after the right to add new Units was last exercised; or (iv) such other time as Declarant may determine, in its sole discretion (the earlier to occur of said dates is herein referred to as the "Expiration of Declarant's Appointment Period"). From and after such date, a majority of the members of the Board of Directors shall be Unit Owners other than Declarant or designated representatives of Declarant.

e. **Managing Agent.** The Association may employ a Managing Agent to administer and manage the affairs of the Association. Any contract with a Managing Agent, employment contract, lease of recreation facilities, or any lease or contract to which Declarant is a party, shall provide for the right of the Association to terminate such contract without penalty at any time upon not more than 90 days' notice.

f. **Duty to Keep Association Records.** The Association shall keep books, records and financial statements sufficiently detailed to enable the Association to comply with the Act, including, but not limited to, financial records sufficiently detailed to provide a statement setting forth the amount of any unpaid Assessments currently levied against an Owner. The Association additionally shall cause an audited financial statement to be available annually within 120 days after the end of its then-current fiscal year. In addition, the Association shall maintain current copies of this Declaration, the Map, Articles, Bylaws and Rules, and of all amendments to any of said documents. The foregoing items shall be available for inspection by any Owner or prospective purchaser of a Unit upon advance arrangements during normal business hours.

g. **Bylaws and Articles.** - The purposes and powers of the Association and the rights and obligations with respect to Owners set forth in this Declaration may and shall be amplified, but not modified, by provisions of the Articles and Bylaws of the Association.

## 19. **Certain Rights and Obligations of the Association.**

a. **Association as Attorney-in-Fact for Owners.** The Association is hereby irrevocably appointed attorney-in-fact for the Owners, and each of them, to manage, control and

deal with the interest of each Owner in the Common Elements so as to permit the Association to fulfill all of its duties and obligations and to exercise all of its rights hereunder, and to deal with the Project upon its destruction or obsolescence as hereinafter provided. The acceptance by any Person of any interest in any Condominium Unit shall constitute an appointment of the Association as attorney-in-fact as provided above and hereinafter. The Association shall have all rights expressly granted by this Declaration, the Articles, the Bylaws or the Act, and shall have and may exercise all of the powers necessary to govern, manage, maintain, repair, rebuild, administer and regulate the Project and to perform all of the duties required of it subject to the restrictions set forth in this Declaration. Notwithstanding the foregoing provisions of this Paragraph 19.a, but subject to the provisions of Paragraphs 4, 8, 29, 30 and 31.b, unless Owners representing an aggregate ownership interest of 67% or more of the Common Elements (excluding Declarant before expiration of the Development Rights Period) have given their prior written approval, the Association shall not be empowered or entitled to:

- (1) by act or omission, seek to abandon or terminate the Project;
- (2) change the pro rata interest or obligations of any individual Condominium Unit for the purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards;
- (3) partition any Condominium Unit or subdivide any Condominium Unit other than Units previously combined pursuant to Paragraphs 4.a or 4.b;
- (4) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer (excluding the exercise of the Association's rights under Paragraphs 14 and 15.f) any of the Common Elements; and
- (5) use hazard insurance proceeds for loss to the improvements (whether Units or Common Elements) for other than repair, replacement or reconstruction of such improvements.

During the Development Rights Period, none of the foregoing determinations shall have any force or effect unless approved in writing by Declarant.

b. **Common Elements.** The Association shall provide for the care, operation, management, maintenance, repair and replacement of the Common Elements, except as provided in Paragraph 16. Without limiting the generality of the foregoing, said obligations shall include the keeping of such Common Elements in good, clean, attractive and sanitary condition, order and repair; keeping the Project attractive and desirable; and making necessary or desirable alterations, additions, betterments or improvements to or on the Common Elements.

c. **Other Association Functions.** The Association may undertake any activity, function or service for the benefit of or to further the interests of all, some or any Owners on a self-supporting, special assessment or common assessment basis, but any assessments levied pursuant to this Paragraph 19.c shall be subject to the limitations and

provisions of Paragraph 20. Such activities, functions or services may include the providing of police or similar security services and/or the providing of garbage and trash collection services.

d. **Labor and Services.** The Association may: (i) obtain and pay for the services of a Managing Agent to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Association or by any Person with whom or with which it contracts; (ii) obtain and pay for legal and accounting services and other professional services necessary or desirable in connection with the operation of the Project or the enforcement of this Declaration; and (iii) arrange with others to furnish lighting, heating, water, trash collection, sewer service and other common services.

e. **Property of Association.** The Association may pay for, acquire and hold or lease real property (for the purpose set forth in Paragraph 18) and tangible and intangible personal property, and may dispose of the same by sale or otherwise. Subject to the Rules, each Owner and each Owner's Guests may use such property as may be designated by the Association for such use. Upon termination of condominium ownership of the Project and dissolution of the Association, if ever, such property shall be deemed to be owned by the then Owners as tenants in common in the same proportion as their respective interests in the Common Elements. A transfer of a Condominium Unit, including a transfer resulting from a foreclosure pursuant to a Mortgage, shall transfer to the transferee the transferor's interest in such property without any reference thereto. Each Owner may use such property in accordance with the purposes for which it is intended so long as such use does not hinder or encroach upon the lawful rights of the other Owners.

f. **Association Right to Lease and License Common Elements.** The Association shall have the right to lease, license, grant easements or concessions or permit the use of, by less than all Owners or by non-owners, on either a short-term basis or long-term basis and with or without charge as the Association may deem desirable, any portion of the Common Elements or any Condominium Unit owned by the Association (including any Condominium Unit purchased from the Declarant).

g. **Enforcement by Association.** Subject to the restrictions contained in Paragraph 17, the Association may take judicial action against any Owner to enforce compliance with the Rules and all other obligations arising under and restrictions contained in this Declaration or to obtain damages and/or injunctive relief for noncompliance thereof, all to the extent permitted at law or in equity. Additionally, after not less than ten days' prior written notice and an opportunity by the Owner to be heard, the Association may levy reasonable fines against any Owner for his violations of this Declaration, the Bylaws and the Rules. In any action or proceeding commenced pursuant to this Sub-Paragraph, the Association shall have the right to recover reasonable attorneys' fees and costs from any Owner who violates this Declaration, the Bylaws or the Rules. The Association, however, shall not have the power to suspend any Owner's voting rights in the Association due to such Owner's failure to comply with any obligation arising under this Declaration.

h. **Certificate.** The Board of Directors may, from time to time, record a certificate of the identity and the mailing addresses of the persons then comprising the Board of Directors, together with the identity and address of the Managing Agent, if any. Such certificate shall be conclusive in favor of any Person relying thereon in good faith regardless of the time elapsed since the date thereof.

i. **Rules and Regulations.** The Association shall have the right to promulgate such reasonable rules and regulations (the "Rules") as it deems necessary or desirable to effectuate the intent and to enforce the duties and obligations set forth in this Declaration, the Articles and Bylaws. Any Rule so promulgated by the Association shall be effective ten days after the date that written notice of such Rule is provided to the Owners.

j. **Acquisition/Encumbrance of Common Elements.** The Association may acquire, hold, encumber and carry in its own name any right, title or interest to real or personal property, provided the Common Elements may be conveyed, subjected to a Mortgage or otherwise transferred only pursuant to Section 312 of the Act and after compliance with Paragraph 19.a.

k. **Assignment of Income.** The Association may assign its rights to future income, including the right to receive any type of assessment.

20. **Assessment for Common Expenses and Other Items.**

a. **Common Expense Assessments.** All owners, including Declarant, shall be obligated to pay the assessments imposed by the Association to meet the Common Expenses. Common Expenses shall be assessed against the Units pro rata in accordance with the percentages set forth on Exhibit 2. The Common Expense assessments have been allocated to each Unit as a percentage based upon a fraction, the numerator of which is one (1), and the denominator of which is the total number of Units. The Limited Common Elements shall be maintained in the same manner as other Common Elements, and except as otherwise expressly provided in Paragraph 16 above Owners having exclusive use thereof shall not be responsible for any special charges or assessments for the repair or maintenance thereof (unless necessitated by the actions of a particular Owner or such Owner's Guests). Assessments for Common Expenses shall be due and payable monthly in advance on the first day of each calendar month or on such other dates as the Board may determine.

b. **Commencement of Assessments.** Assessments for Common Expenses by the Association shall commence upon the conveyance by Declarant of the first Unit to a third party and shall be made no less frequently than annually based on the budget of the Association for the then current calendar year. Prior to said date, Declarant shall pay all Common Expenses of the Association.

c. **Budget.** The Board of Directors shall cause to be prepared, at least 60 days prior to the commencement of each calendar year, a budget for such calendar year



("Budget"). The Budget shall show, in reasonable detail, the categories and estimated amounts of expenses for Common Expenses, any expected income of the Association for the coming calendar year, any expected surplus from the prior year and any existing surplus held by the Association. The Budget shall include an amount for contingencies and amounts deemed necessary or desirable for capital and/or replacement reserves to provide for the repair, renovation, reconstruction or replacement of, or for any additions to, the Common Elements, and such other expenditures permitted hereunder. Within 30 days after the adoption of any Budget by the Board of Directors, the Board shall: (i) mail by ordinary first class mail, or otherwise deliver a summary of the Budget to all Owners, and (ii) set a date for a meeting of the Owners to consider ratification of the Budget not less than fourteen (14) nor more than 60 days after mailing or other delivery of the summary. Such meeting may be concurrent with the annual meeting of Owners as provided in the Bylaws. Unless at that meeting a majority of all of the Owners present or voting by proxy reject the Budget, the Budget shall be deemed ratified, whether or not a quorum is present. No further approval of the Owners shall be required for any expenditures contemplated by the Budget irrespective of the amount thereof. If the Budget is rejected, the periodic Budget last ratified by the Owners shall constitute the Budget adopted by the Owners and shall remain in effect until such time as the Owners ratify a subsequent Budget proposed by the Board, it being the intention that at least annually a Budget shall be adopted by the Association either by affirmatively adopting the proposed Budget or ratifying the last periodic Budget.

d. **Amount of Assessments.** Assessments for Common Expenses shall be based upon the cash requirements of the Association which shall be deemed to be such aggregate sum as the Board of Directors shall from time to time determine is to be paid by the Owners to provide for the payment of all estimated expenses of ownership, maintenance, repair, alteration, addition, improvement and operation of the Common Elements, as reflected in the Budget. Such sums shall include, but shall not be limited to, expenses of management; taxes and special assessments; premiums for insurance; landscaping and care of grounds; common lighting and heating and other common utility charges; cable television charges; trash and garbage collections; wages; common water and sewer charges; legal and accounting fees; management fees; expenditures for repair, replacement, renovation, reconstruction or alteration of, or for additions to, the Common Elements; expenses and liabilities incurred by the Association or the Managing Agent on behalf of the Unit Owners under or by reason of this Declaration, the Articles of Incorporation, or the Bylaws; any deficit remaining from a previous period; the creation of a reasonable contingency reserve and working capital reserve; and all other costs and expenses related to the Common Elements. Further, provision shall be made for an adequate reserve fund to provide for repair, reconstruction and replacement of the Common Elements and for a general operating reserve.

e. **Special Assessments.** The Board of Directors shall have the further right during any calendar year, upon not less than 30 days' notice to the Owners, to levy and assess against the Owners, in a manner similar to Assessments for Common Expenses, a special assessment ("Special Assessment") for such purpose or purposes as may be necessary or appropriate to maintain the Project to such standard as the Board deems appropriate. Special Assessments may include, without limitation, assessments for the cost of any construction,

reconstruction, repair or replacement of any Common Elements, including fixtures and personal property, to the extent such cost is in excess of the amount contemplated by the approved Budget for such calendar year. Within 30 days after the determination by the Board to levy any such special assessment, the Board shall set a date for a meeting of the Owners in accordance with the procedures set forth in Paragraph 20.c. At such meeting, the proposed Special Assessment(s) may be vetoed by a vote of the Owners representing a majority of the percentage interests in the Common Elements who are present or voting by proxy at a meeting to be called for this purpose, whether or not a quorum is present, and if not so vetoed the Special Assessment shall be deemed ratified. Notwithstanding the foregoing, however, Special Assessments imposed for the purposes described in Paragraph 17 above shall be subject to the procedures and requirements set forth in said Paragraph.

f. **Reimbursement Assessments.** The Board of Directors may, subject to the provisions hereof, levy an assessment against any Owner of a Unit if the failure of the Owner or such Owner's Guests to comply with this Declaration, the Articles, the Bylaws or the Rules causes the Association to incur any expenses, liability or potential claim, including any such sums expended for attorneys' fees and any sums expended to cause such compliance ("Reimbursement Assessment"). Except for Reimbursement Assessments imposed pursuant to Paragraph 16 above (which may be imposed without notice as costs are incurred), the Association shall not levy a Reimbursement Assessment until after first giving the Owner at least ten days prior written notice of the proposed levy and an opportunity for the Owner to be heard. The amount of the Reimbursement Assessment imposed pursuant to this Paragraph shall be due and payable to the Association 30 days after notice to the Owner of the decision of the Board of Directors that the Reimbursement Assessment is owing. The Association shall have the power to enforce Reimbursement Assessments in accordance with the provisions of Paragraph 24. If any such Reimbursement Assessment results from the need to provide reimbursement for any expenditure of funds by the Association, the amount of such assessment shall bear interest from the date the expenditure was made at a rate equal to the lesser of eighteen percent (18%) per annum or the maximum rate permitted by law. Any claim, controversy, or dispute over the imposition, amount or any other aspect of a Reimbursement Assessment shall be resolved by binding arbitration in accordance with Paragraph 35.k.

g. **Failure to Fix Assessment.** The omission or failure to establish any Assessment or deliver or mail a statement for any period shall not be deemed a waiver, modification, or release of the Owners from their obligations to pay the same.

h. **Surplus Funds.** The Association shall not be required to credit any surplus funds of the Association remaining after payment of, or provision for, the Common Expenses against any future Assessments to be levied by the Association.

i. **Late Charges/Interest.** If any Assessment, fine or penalty shall remain unpaid after 10 days after the due date thereof, the Association shall be entitled to collect from the defaulting Owner: (i) a late charge in the initial amount of \$15.00 per month which amount the Board may subsequently determine from time to time to be sufficient to cover the extra costs and expenses involved in handling such delinquent payment; (ii) interest at the rate of eighteen

percent (18%) per annum on the amount of the delinquent Assessment, fine or penalty from the due date thereof; and (iii) all costs and expenses incurred by the Association in connection with the collection of the same, including reasonable attorneys' fees. The rate of default interest specified above may be changed by the Board from time to time, but may not exceed the maximum rate permitted pursuant to Section 315(2) of the Act. Amounts charged under this Paragraph shall constitute a lien as set forth in Paragraph 24.

21. **Assessment Reserves.** At the closing of the initial sale of each Unit by Declarant to the initial third-party purchaser, the purchaser shall deposit with the Association an amount determined by the Association, which sum shall not exceed two times the amount of the monthly Common Expense assessment then allocable to such Unit. Such sum shall be held, without interest, by the Association or Managing Agent in a segregated account as a reserve for working capital, and may be used for such purposes as the Association or the Board deems necessary or appropriate. Such payment shall not be considered an advance payment of regular assessments or relieve an Owner from making the regular monthly payment of the monthly Assessments as the same come due. Upon the transfer of his Unit, if the Owner and his transferee so agree, an Owner shall be entitled to a credit from his transferee for the amount of the deposit provided by the Owner pursuant to this Paragraph 21. While Declarant is in control of the Association, it cannot use any of the working capital funds of the Association to defray Declarant's expenses or reserve contributions, or non-Association construction costs, or to make up any non-Association budget deficits.

22. **Additions, Alterations and Improvements -- General and Limited Common Elements.** The Association may make such capital additions, alterations or improvements of or to the Common Elements during any calendar year as may be provided for or contemplated pursuant to the Budget for such year approved in accordance with Paragraph 20c above. Further, if the Board determines that any alterations, additions or replacements of or to any Common Elements are required in excess of the amounts provided for or contemplated pursuant to the current year's Budget, such expenditure may be approved as a Special Assessment if approved in accordance with the procedures set forth in Paragraph 20.f above. Such procedures, however, shall not apply to expenditures for repair or replacement upon any damage, destruction or condemnation governed by Paragraphs 29 or 30.

23. **Insurance.**

a. **Required Coverages.** Commencing not later than the date of the first conveyance of a Unit to a person other than Declarant, the Association shall obtain and maintain at all times, to the extent available upon commercially reasonable terms, policies of insurance, written with companies licensed to do business in Colorado having a B general policy holder's rating or a financial performance index of 6 or better in the Best's Key Rating Guide, or an A or better rating from Demotech, Inc., covering the risks set forth below. The types of coverages to be obtained, risks to be covered, and policy provisions shall at a minimum comply with the requirements of Section 313 of the Act, and further shall provide for the following:

(1) **Casualty.** Property insurance on broad form covered causes of loss, under extended coverage and all risk endorsements. Said insurance shall insure the Common Elements (including all of the fixtures in the Units which were initially installed or conveyed by the Declarant, but not including improvements or fixtures installed by an Owner or any furnishings, including carpeting and other floor coverings, wall coverings, draperies, oven, range, refrigerator, disposal and other items of personal property belonging to an Owner), together with all service equipment contained therein in an amount equal to the full replacement value at the time the insurance is purchased and at each renewal date, without deduction for depreciation. Such policy shall include an agreed amount endorsement, an inflation guard endorsement and building ordinance or law enforcement endorsement, to the extent same are available on commercially reasonable terms. All policies shall contain a standard non-contributory mortgage clause in favor of each First Mortgagee, which shall provide that the insurance proceeds shall be payable to the Association for the use and benefit of the Owners and the First Mortgagees, as their interests may appear. Such policy shall provide for a maximum deductible amount equal to the lesser of \$10,000.00 or 1.0% of the policy face amount.

(2) **Flood.** If the Project is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards, and if the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, a "blanket" policy of flood insurance on the Project in an amount which is the lesser of the maximum amount of insurance available under the National Flood Insurance Act of 1968 or the aggregate of the unpaid principal balances of the First Mortgages on the Condominium Units comprising the Project.

(3) **Liability.** Commercial general liability and property damage insurance covering all of the Common Elements, commercial space owned and leased by the Association, and public ways of the Project in such limits as the Board or Managing Agent may from time to time determine, but not in an amount less than \$1,000,000.00 per injury, per person, per occurrence, and with umbrella liability limits of not less than \$2,000,000.00 per occurrence, covering all claims for bodily injury or property damage. Coverage shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and death of persons in connection with the operation, maintenance or use of the Common Elements, legal liability arising out of lawsuits related to employment or independent contractor contracts of the Association and operation of automobiles on behalf of the Association. Such liability insurance shall name the Owners, the members of the Board of Directors, the Managing Agent and the Declarant and their respective employees, agents and all persons acting as agents as additional insureds, and otherwise shall comply with Section 313(1)(b) of the Act.

(4) **Boilers.** If there are steam boilers in operation on the Project, there must be in force boiler explosion insurance providing for coverage of not less than \$50,000.00 per accident per location.

(5) **Worker's Compensation.** Worker's compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association, if any, in the amounts and in the forms now or hereafter required by law.

(6) **Fidelity Bond.** Fidelity coverage against dishonesty of employees, the Managing Agent and any other Person receiving, controlling or disbursing funds of the Association, and against destruction or disappearance of money or securities and forgery. Said policy shall also contain endorsements covering any persons who serve the Association without compensation. The fidelity insurance coverage must at least equal the maximum amount of funds that will be in the custody of the Association or the Managing Agent at any time while the policy is in force, but in no event in an amount less than the greater of (a) \$50,000.00, or (b) three months' aggregate Assessments on all Units plus reserve funds, or such higher amount as the Board may require. Each policy shall include a waiver by the issuer of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions.

(7) **Others.** The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the Project, including insurance against loss or damage to plate or other glass and to any personal property of the Association.

b. **Policies and Procedures.**

(1) **Deductibles; Requirements.** Except as provided in Paragraph 23.a above, insurance obtained by the Association may contain such deductible provisions as the Board may deem appropriate. If the insurance described is not available upon commercially reasonable terms, or if any policy of insurance is canceled or expires without a replacement policy therefore having been obtained by it, the Association shall promptly cause notice of that fact to be delivered to all Owners. The Association may carry any other type of insurance it considers appropriate, in amounts it deems appropriate, to insure the interests of the Association or the Project. Insurance policies carried pursuant to this Sub-Paragraph shall contain the provisions and coverages required by Section 313(4) of the Act.

(2) **Procedures for Claims.** The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment, in accordance with Section 313(6) of the Act. Provided Declarant reimburses the Association for any additional premium payable on account thereof, insurance obtained by the Association shall, to the extent reasonably possible, name Declarant as an additional insured and shall contain a waiver of rights of subrogation as against Declarant.

c. **General Provisions Required.** All policies of insurance, to the extent obtainable, shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of an Owner, and shall provide that such policies may not be canceled or modified, and that the insurer may not refuse to renew the same, without at least 30 days' prior written notice thereof to all of the Owners, First Mortgagees, the Association and any other parties entitled to notice thereof under applicable law. Certificates of insurance shall be issued to each Owner and Mortgagee upon request. Duplicate originals of all policies and renewals

thereof, together with proof of payments of premiums, shall be delivered at least ten days prior to expiration of the then current policies to all First Mortgagees requesting same. All casualty insurance shall be carried in blanket form naming the Association as the insured, as attorney-in-fact for all of the Owners and First Mortgagees, as their interests may appear, which policy or policies shall identify the interest of each Owner (by the Owner's name and Unit number designation) and First Mortgagee.

d. **Required Appraisals.** Prior to obtaining any policy of casualty insurance or renewal thereof pursuant to the provisions of Sub-Paragraph 23.a.(1) above, the Board or Managing Agent shall obtain an appraisal from one or more qualified consultants knowledgeable in determining replacement cost, who shall reasonably estimate the full replacement value of the entire Project, without deduction for depreciation, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions of Sub-Paragraph 23.a.(1) above. Such determination of full replacement value shall be made annually, and each First Mortgagee, upon request, shall be furnished with a copy thereof within 30 days after receipt of such written appraisals. Such amounts of insurance shall be updated annually in accordance with the currently determined full replacement value.

e. **Owner Policies.** Insurance policies issued to the Association do not eliminate the need for Unit Owners to obtain insurance for their own benefit. Individual Owners may carry such other insurance for their own benefit and at their own expense as they may deem appropriate, provided that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished by reason of any such additional insurance carried by any Owner. Insurance coverage on improvements and fixtures installed by an Owner and on furnishings, including carpeting and other floor coverings, draperies, oven, range, refrigerator, wallpaper, disposal and other items of personal property belonging to an Owner, and public liability coverage within each Unit shall be the sole and direct responsibility of the Owner thereof, and the Board of Directors, the Association, Declarant and/or the Managing Agent shall have no responsibility therefore.

f. **Owner's Actions.** All policies of insurance shall provide that the insurance thereunder shall be invalidated or suspended only with respect to the interest of any particular Owner that is guilty of a breach of warranty, a negligent or willful act or omission, or non-compliance with any provision of such policy, including payment of the insurance premium applicable to that Owner's interest. Furthermore, if a particular Owner permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of a policy would otherwise invalidate or suspend the entire policy, the insurance under any such policy attributable to the interests of all other insured Owners, First Mortgagees and other Persons who are named insureds and who are not guilty of any such act or omission shall not be invalidated or suspended and shall remain in full force and effect.

24. **Lien for Non-Payment of Assessments.**

a. **Lien.**

(1) All due and unpaid Assessments chargeable to any Owner, including Special and Reimbursement Assessments, and all fines, late charges, penalties or interest assessed but unpaid in accordance with this Declaration, and all costs and expenses, including reasonable attorneys' fees, incurred in collecting such amounts, shall constitute a lien on such Owner's Unit with the priority granted to an assessment lien pursuant to Section 316(2) of the Act and other applicable provisions of Colorado law.

(2) To evidence such lien the Board of Directors or Managing Agent may (but shall not be obligated to) prepare a written notice setting forth the amount of such unpaid indebtedness, the amount of late charges and accrued interest, the name of the Owner of the Condominium Unit and a description of the Condominium Unit. If prepared, such notice shall be signed by one of the members of the Board of Directors or by the Managing Agent, and shall be recorded in the Records. Such lien for Assessments shall attach upon the failure of payment of the Assessment on the date it became due.

b. **Enforcement of Lien.** Such lien may be enforced at the election of the Association by:

(1) Foreclosure of the lien against the defaulting Owner's Condominium Unit by the Association in like manner as a mortgage on real estate, upon the recording of a notice or claim thereof. During the period of such foreclosure action, the Owner shall also be required to pay to the Association when due all Assessments for the Condominium Unit. The Managing Agent, the Board of Directors and other Owners shall have the power to bid on the Condominium Unit at foreclosure sale and to acquire and hold, lease, mortgage and convey same; or

(2) Such other action or proceeding as may be authorized by Colorado law.

In any proceedings under this Paragraph 24 or under Paragraph 25 below, the Owner shall be required to pay, and the obligation shall be deemed to include, all costs, expenses and reasonable attorneys' fees incurred in connection with collecting such Assessments. The Association shall be entitled to the appointment of a receiver during the pendency of any action brought under this Paragraph 24 or under Paragraph 25 below to collect all sums alleged to be due from the Owner prior to or during the pending action.

c. **Encumbrancer's Rights.** Any encumbrancer holding a lien on a Condominium Unit may pay, but shall not be required to pay, any unpaid Assessments payable with respect to such Condominium Unit, and upon such payment the encumbrancer shall have a lien on such Condominium Unit for the amounts paid of the same rank as the encumbrancer's lien. Except as expressly provided under the Act or other provisions of Colorado law, any First

Mortgagee who acquires a Condominium Unit by foreclosure or by a deed in lieu thereof shall acquire title to such Condominium Unit free and clear of any lien for unpaid Assessments, and shall only be responsible for Assessments arising after the date upon which such First Mortgagee receives a deed to the Condominium Unit. All amounts not recovered by the Association under this Paragraph 24.c shall remain a personal or individual obligation of the prior Owner of such Unit.

d. **Homestead Exemption.** Each Owner hereby agrees that the Association's lien on a Condominium Unit for Assessments shall be superior to the Homestead Exemption provided by C.R.S. § 38-41-201, *et seq.*, and each Owner hereby agrees that the acceptance of a deed or other instrument of conveyance for any Condominium Unit within the Project shall signify such grantee's waiver of the homestead exemption granted in said section of the Colorado statutes.

e. **Release of Lien.** Any recorded lien for Assessments may be released by recording a Release of Lien executed by a member of the Board of Directors or by the Managing Agent on behalf of the Association.

25. **Owners' Obligations for Payment of Assessments.** The amount of the Assessments assessed against each Condominium Unit, plus all fines, late charges, penalties, interest, costs and expenses, including reasonable attorneys' fees, shall be the personal and individual debt of the Owner or Owners of such Unit at the time the Assessment is made or the other costs are incurred. Suit to recover a money judgment for unpaid Assessments, fines, late charges, penalties, interest, costs and expenses, including attorney's fees, shall be maintainable without foreclosing or waiving the lien securing the same. No owner may exempt himself from liability for his contribution towards the Assessments by waiver of the use or enjoyment of any of the Common Elements or by abandonment of his Condominium Unit.

26. **Liability for Common Expenses Upon Transfer of Condominium Unit is Joint.**

a. **Ascertainability of Unpaid Assessments; Financial Statements.** Upon written request for a statement of account by an Owner, Mortgagee, prospective Mortgagee or prospective grantee of a Unit, or by a holder of a security interest in a Unit, or by a Person authorized in writing to make such request, the Association or the Managing Agent shall deliver in accordance with the Act a copy of the most recent financial statement of the Association, if any, and a written statement of (i) the amount of any unpaid Assessments, including but not limited to any Special or Reimbursement Assessments, (ii) the amount of the current levied Assessments, (iii) the dates that Assessments are due, (iv) the amount of any advance payments made, (v) the amount of any prepaid items such as insurance premiums and reserves therefore, and (vi) deficiencies in reserve accounts. Such statements shall be conclusive upon the Association in favor of all persons who rely thereon in good faith. Any such statement shall be delivered within 14 days after the receipt of the request and shall be binding on the Association, the Board of Directors, and all Unit Owners. If no such statement is furnished upon request of an Owner or Mortgagee, or their respective designees, by personal delivery or by certified mail,



first-class postage prepaid, return receipt requested, then the Association shall have no right to assert a lien upon the Unit for unpaid Assessments which were due as of the date of the request.

b. **Grantee Liability.** The grantee of a Condominium Unit, except a First Mortgagee who acquires a Condominium Unit by foreclosure or a deed in lieu of foreclosure, shall have no liability for all unpaid Assessments up to the time of the grant or conveyance to the grantee.

27. **Mortgaging a Condominium Unit -- Priority.** Any Owner shall have the right from time to time to mortgage or encumber his Condominium Unit by deed of trust, mortgage or other security instrument. The Owner of a Condominium Unit may encumber his Unit with a Mortgage or Mortgages with priority junior to the lien of the First Mortgage (collectively, the "Junior Mortgage") on the following conditions: (a) any such Junior Mortgage shall always be subordinate to all of the terms, conditions, covenants, restrictions, uses, limitations, obligations, lien for Assessments and other obligations created by this Declaration; and (b) the Mortgagee under any Junior Mortgage shall release, for the purpose of restoration of any improvements upon the encumbered Condominium Unit, all of his right, title and interest in and to the proceeds under all insurance policies upon said Condominium Unit which were effected or obtained by the Association. Such release shall be furnished forthwith by the holder of the Junior Mortgage upon written request of the Managing Agent or the Association, and if not furnished may be executed by the Association as attorney-in-fact for such holder of a Junior Mortgage.

28. **Restrictive Covenants and Obligations.**

a. **No Imperiling of Insurance.** No Owner and no Owner's Guests shall do anything or cause anything to be kept in or on the Project which might: (i) result in an increase in the premiums of insurance obtained for the Project unless the Owner pays the full amount of such increase upon demand of the Association; or (ii) cause cancellation of such insurance.

b. **No Violation of Law.** No Owner and no Owner's Guests shall do anything or keep anything in or on the Project which would be in violation of any statute, rule, ordinance, regulation, permit or other requirement of any governmental body.

c. **No Noxious, Offensive, Hazardous or Annoying Activities.** No noxious, unsafe or offensive activity shall be carried on upon any part of the Project, nor shall anything be done or placed on or in any part of the Project which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others. No activity shall be conducted on any part of the Project and no improvements shall be made or constructed on any part of the Project which are or might be unsafe or hazardous to any Person or property. No trash may be kept or stored within or outside any Unit in a manner which may permit the spread of fire, odors or seepage, or that may encourage vermin or other pests. No sound shall be emitted from any part of the Project which is unreasonably loud or annoying, no odor shall be emitted which is noxious or offensive to others, and no light shall be emitted which is unreasonably bright or causes unreasonable glare.

d. **No Unsightliness.** No unsightliness or waste shall be permitted on or in any part of the Project. Without limiting the generality of the foregoing, no Owner shall keep or store anything (except in designated storage areas) on or in any of the Common Elements. No Owner shall hang, erect, affix or place anything upon any of the Common Elements (except for decorative items located within his Unit), and no Owner shall place anything on or in windows or doors of Units which would or might create an unsightly appearance or create an unsafe condition.

e. **Restriction on Animals.** Except as otherwise provided in this Paragraph, no animals, livestock, reptiles or birds shall be kept on any part of the Project. Domesticated dogs, cats, birds or fish may be kept in a Unit, subject to all governmental animal ordinances and laws and subject to any Rules promulgated by the Association in regard thereto. The Association may authorize additional types of animals by means of Rules promulgated pursuant to Paragraph 19.i above. In no event, however, may any Owner keep animals on any part of the Project for any commercial purposes. An Owner is responsible for any damage caused by his animal(s) and shall be obligated to clean up after his animal(s) on the Project. No animals shall be allowed to remain tied or chained to any balconies, patios or other parts of the Project, and any such animal(s) so tied or chained may be removed by the Association or its agents.

f. **Restriction on Signs.** Except as hereafter provided, no signs or advertising devices of any nature shall be erected or maintained on any part of the Project without the prior written consent of the Board. The Board shall permit the placing of at least one sign of reasonable size and dignified form to identify the Project and the Condominium Units therein.

g. **No Violation of Rules.** No Owner and no Owner's Guests shall violate any Rules adopted from time to time by the Association, whether relating to the use of Units, the use of Common Elements, or otherwise. The Board may impose a reasonable fine on any Owner for each violation by such Owner and his Guests after at least ten days' prior written notice of the intent to impose such fine and an opportunity to be heard.

h. **Owner Caused Damages.** If any loss or damage shall be caused to any Person or property, including the Project or any Unit therein, due to the act or neglect of any Owner or such Owner's Guest, such Owner shall be liable and responsible for the same except to the extent that such damage or loss is covered by insurance obtained by the Association and the carrier of the insurance has waived its rights of subrogation against such Owner. The amount of any uninsured loss or damage may be collected by the Association from such Owner as an assessment against such Owner, by legal proceedings or otherwise, and such amount (including reasonable attorneys' fees) shall be secured by a lien on the Condominium Unit of such Owner as provided herein for Assessments.

i. **Leasing of a Condominium Unit.** The Owner of a Condominium Unit shall have the right to lease his Condominium Unit under the following conditions:

- (1) No Owner may lease less than his entire Condominium Unit;

(2) All leases shall be in writing;

(3) All leases shall provide that the initial term of the lease is at least thirty (30) days, and the lessee's occupancy of the Condominium Unit shall be subject in all respects to the provisions of this Declaration and to the provisions of the Articles and Bylaws. Any failure by the lessee to comply therewith shall be a default under the lease. Any Owner who leases his Condominium Unit shall, within ten days after the execution of such lease, forward a copy of the same to the Board or the Managing Agent.

(4) Except for a First Mortgagee in possession of a Condominium Unit following the default under its Mortgage or in connection with foreclosure proceedings or any deed or other arrangement in lieu of foreclosure proceedings by such First Mortgagee, no Owner may lease his Condominium Unit for a term of less than seven days, or for transient or hotel purposes.

j. **Vehicle Restrictions.** No trailer, camper, mobile home, commercial vehicle, truck (other than a standard size van or pickup truck not exceeding 1 ton), boat or similar equipment shall be permitted to remain upon any area within the Project, including without limitation any parking area, other than temporarily (which is defined as a period of less than two calendar days and less than four total days in any calendar month). No vehicle may be parked or stored in any parking space which does not fit within the boundaries of such parking space. No vehicles may be operated on the Project which are unreasonably noisy or which emit an unreasonable amount of smoke or other emissions. No off-road unlicensed motor vehicles may be operated upon the Project. No maintenance, repair, rebuilding, dismantling, painting or servicing of any kind of motor vehicle shall take place anywhere within the Project, including without limitation within any parking areas. This restriction shall not be deemed to prohibit washing or polishing of vehicles. In addition to any other remedies it may have for any such violation, the Association shall be entitled to tow or cause to be towed, and/or may impound or cause to be impounded, any automobile or other vehicle that is operated, parked or stored in violation of the restrictions set forth in this Declaration or any applicable Rule. The costs and expenses incurred in connection with any such activity shall be assessed against the applicable Owner as a Reimbursement Assessment.

k. **Parking of Vehicles.** In addition to the foregoing restrictions, parking of any and all automobiles, motorcycles or similar vehicles and of any bicycles in the parking areas of the Project, and the operation of the parking areas that are Common Elements, shall be subject to such reasonable, non-discriminatory Rules as the Association may promulgate.

l. **Final Determination.** Determination with respect to whether or not a particular activity or occurrence shall constitute a violation of this Paragraph 28 shall be made by the Board of Directors and shall be final.

29. **Association as Attorney-in-Fact -- Damage and Destruction -- Obsolescence.** This Declaration makes mandatory the irrevocable appointment of an attorney-in-fact to deal

with the Project upon its damage, destruction, repair, reconstruction or obsolescence. Title to any Condominium Unit is declared and expressly made subject to the following terms and conditions, and acceptance by any grantee of a deed from the Declarant or from any Owner shall constitute appointment of the attorney-in-fact herein provided. All of the Owners and holders of any interest in the Project irrevocably constitute and appoint the Association as their attorney-in-fact, in their name, place and stead, for the purpose of dealing with the Project upon its damage, destruction, repair, reconstruction or obsolescence as hereinafter provided. As attorney-in-fact, the Association, by its duly authorized officers, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or other instrument with respect to the interest of an Owner which is necessary and appropriate to exercise the powers herein granted. Repair and reconstruction of the improvement(s) as used in the succeeding Paragraphs means restoring the improvement(s) to substantially the same condition in which they existed prior to the damage, with each Unit and the Common Elements having substantially the same vertical and horizontal boundaries as before. Except as otherwise herein provided, the proceeds of any insurance collected shall be available to the Association for the purpose of repair, restoration, reconstruction or replacement unless the Owners and the First Mortgagees agree not to rebuild in accordance with the provisions set forth hereinafter. Assessments for Common Expenses shall not be abated during the period of insurance adjustment, repair and reconstruction.

a. **Less Than Two-Thirds Destroyed; Fully Insured.** Upon damage or destruction to the Project to the extent of not more than two-thirds of the total replacement cost thereof, not including land, due to fire or other casualty, the insurance proceeds, if sufficient to reconstruct the improvement(s), shall be applied by the Association, as attorney-in-fact, to such reconstruction, and the improvement(s) shall be promptly repaired and reconstructed. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair and restoration of the improvement(s) using insurance proceeds for same.

b. **Less Than Two-Thirds Destroyed; Not Fully Insured.** If the insurance proceeds are insufficient to repair and reconstruct the improvements(s), and if such damage is to the extent of not more than two-thirds of the total replacement cost of the Project, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association, as attorney-in-fact, using the proceeds of insurance and the proceeds of an Assessment to be made against all of the Owners and their Condominium Units. Such deficiency Assessment shall be a Common Expense, shall not require the consent or approval of the Owners, shall be made pro rata according to each Owner's interest in the Common Elements and shall be due and payable within 30 days after written notice thereof. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair or restoration of the improvements using all of the insurance proceeds and such Assessment. The Assessment provided for herein shall be a debt of each Owner and a lien on his Condominium Unit and may be enforced and collected as provided for Assessments. In addition, the Association, as attorney-in-fact, shall have the absolute right and power to sell the Condominium Unit of any Owner refusing or failing to pay such deficiency assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the Condominium Unit of the delinquent Owner shall be sold by the Association, as attorney-in-fact. The proceeds derived from the sale

of such Condominium Unit shall be used and disbursed by the Association, as attorney-in-fact, in the following order:

- (1) for payment of taxes and special assessment liens in favor of any assessing entity;
- (2) for payment of any unpaid Assessments having priority over a First Mortgage pursuant to Section 316(2)(b) of the Act;
- (3) for payment of the balance of the lien of any First Mortgage;
- (4) for payment of unpaid Assessments;
- (5) for payment of junior Mortgages and encumbrances in the order of and to the extent of their priority; and,
- (6) the balance remaining, if any, shall be paid to the Owner.

c. **More Than Two-Thirds Destroyed; No Reconstruction Plan.** Except as otherwise required by Section 313(9)(a) of the Act, if the Project is damaged or destroyed to the extent of more than two-thirds of the total replacement cost thereof, not including land, and if the Owners representing an aggregate ownership interest of seventy-five percent (75%) or more of the Common Elements do not voluntarily, within 100 days thereafter, make provisions for reconstruction, which plan must have the approval or consent of at least seventy-five percent (75%) of the First Mortgagees (based upon one vote for each Unit encumbered), the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's duly authorized officers, the entire remaining Project shall be sold by the Association, as attorney-in-fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Map, the Articles and the Bylaws. The insurance settlement proceeds shall be collected by the Association and such proceeds shall be divided by the Association according to each Owner's interest (as such interests appear on the policy or policies), and such divided proceeds shall be paid into separate accounts, each such account representing one of the Condominium Units. Each such account shall be in the name of the Association, and shall be further identified by the Condominium Unit designation and the name of the Owner. Thereafter, each such account shall be supplemented by the apportioned amount of the proceeds derived from the sale of the entire Project. Such apportionment shall be based upon each Owner's percentage interest in the Common Elements. The total funds in each account shall be used and disbursed, without contribution from one account to another, by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in Sub-Paragraphs b.(1) through (6) of this Paragraph. The provisions contained in this Paragraph shall not hinder the protection given to a First Mortgagee under a mortgagee endorsement.

d. **More Than Two-Thirds Destroyed; Reconstruction Plan.** If the Project is destroyed or damaged to the extent of more than two-thirds of the total replacement cost thereof, not including land, and if the Owners representing an aggregate ownership interest

of seventy-five percent (75%) or more of the Common Elements adopt, within 100 days thereafter, a plan for reconstruction, which plan must have the approval or consent of at least seventy-five percent (75%) of the First Mortgagees (based upon one vote for each Unit encumbered), then all of the Owners shall be bound by the terms and other provisions of such plan. The Association shall have the right to use, in accordance with such plan, all proceeds of insurance for such destruction or damage, as well as the proceeds of an assessment to be made against all of the Owners and their Condominium Units. Any assessment made in connection with such plan shall be a Common Expense and shall be made pro-rata according to each Owner's percentage interest in the Common Elements, and shall be due and payable as provided by the terms of such plan, but not sooner than 30 days after written notice thereof. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair or restoration of the improvements, using all of the insurance proceeds for such purpose, notwithstanding the failure of an Owner to pay the Assessment. The Assessment provided for herein shall be a debt of each Owner and a lien on his Condominium Unit and may be enforced and collected as provided herein for Assessments. In addition, the Association, as attorney-in-fact, shall have the absolute right and power to sell the Condominium Unit of any Owner refusing or failing to pay such Assessment within the time provided, and if not so paid the Association shall cause to be recorded a notice that the Condominium Unit of the delinquent Owner shall be sold by the Association. The proceeds derived from the sale of such Condominium Unit shall be used and disbursed by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in Sub-Paragraphs b.(1) through (6) of this Paragraph.

e. **Project Obsolete; Renewal Plan.** The Owners representing an aggregate ownership interest of eighty-five percent (85%), or more, of the Common Elements may agree that the Condominium Units are obsolete and adopt a plan for the renewal and reconstruction of the Project, which plan shall have the approval or consent of at least eighty-five percent (85%) of the First Mortgagees (based upon one vote for each Unit encumbered). If a plan for the renewal or reconstruction of the Project is adopted, notice of such plan shall be recorded, and the expenses thereof shall be payable as a Special Assessment by all of the Owners pro-rata according to each Owner's percentage interest in the Common Elements. Any Owner not a party to such a plan for renewal or reconstruction may give written notice to the Association within 15 days after the adoption of such plan that his Condominium Unit shall be purchased by the Association for the fair market value thereof. The Association shall then have 15 days within which to cancel such plan. If such plan is not canceled, the Condominium Unit(s) of such Owner(s) shall be purchased by the Association according to the following procedures. If any such Owner and the Association can agree on the fair market value thereof, then the sale of such Owner's Condominium Unit shall be consummated within 30 days thereafter. If the parties are unable to agree, the date when either party notifies the other that he or it is unable to agree with the other shall be the "commencement date" from which all periods of time mentioned in this Paragraph shall be measured. Within ten days following the commencement date, each party shall nominate in writing (and give notice of such nomination to the other party) an independent appraiser. If one party fails to make such a nomination, the appraiser nominated by the other party shall, within five days after such failure, appoint and associate with him another independent appraiser. If the two appraisers designated by the parties, or selected pursuant to this

Paragraph in the event of the default of one party, are unable to agree upon the fair market value of the Unit prior to the expiration of ten days following the appointment of the second appraiser, they shall, within five days thereafter, appoint another independent appraiser to be umpire between them, if they can agree on such person. If they are unable to agree upon such umpire within such five-day period, then each appraiser previously appointed shall nominate two independent appraisers, and from the names of the four persons so nominated one shall be drawn by lot by any judge of any court of record in Colorado, and the name so drawn shall be such umpire. The nominations from whom the umpire is to be drawn by lot shall be submitted within ten days after the failure of the two appraisers to agree, which, in any event, shall not be later than 30 days following the appointment of the second appraiser. The decision of the appraisers as to the fair market value, or in the case of their disagreement, then the decision of the umpire, shall be final and binding. The expenses and fees of such appraisers shall be borne equally by the Association and the Owner. The sale shall be consummated within 30 days thereafter, and the Association, as attorney-in-fact, shall disburse the proceeds of such sale as is provided in Sub-Paragraphs b.(1) through (6) of this Paragraph.

f. **Project Obsolete; No Renewal Plan.** The Owners representing an aggregate ownership interest of eighty-five percent (85%) or more of the Common Elements may agree that the Condominium Units are obsolete and that the same should be sold. Such agreement must have the approval or consent of at least eighty-five percent (85%) of the First Mortgagees (based upon one vote for each Unit encumbered). In such instance, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by a duly authorized officer of the Association, the entire Project shall be sold by the Association, as attorney-in-fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Map, the Articles and the Bylaws. The sales proceeds shall be apportioned between the Owners on the basis of each Owner's percentage interest in the Common Elements, and such apportioned proceeds shall be paid into separate accounts, each such account representing one Condominium Unit. Each account shall be in the name of the Association, and shall be further identified by the Condominium Unit designation and the name of the Owner. The Association, as attorney-in-fact, shall use and disburse the total amount of each of such accounts, without contribution from one account to another, for the same purposes and in the same order as is provided in Sub-Paragraphs b.(1) through (6) of this Paragraph.

30. **Condemnation.**

a. **Consequences of Condemnation.** If at any time or times during the continuance of condominium ownership pursuant to this Declaration, all or any part of the Project shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance of any such proceeding, the provisions of this Paragraph 30 shall apply.

b. **Proceeds.** All compensation, damages or other proceeds therefrom, the sum of which is hereinafter called the "Condemnation Award," shall be payable to the Association for the use and benefit of the Owners and the Mortgagees, as their interests may appear.

c. **Complete Taking.** If the entire Project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance of any such proceeding, condominium ownership pursuant to this Declaration shall terminate. The Condemnation Award shall be apportioned among the Owners in proportion to their respective undivided interests in the Common Elements, provided that if a standard different from the value of the Project as a whole is employed to measure the Condemnation Award in the negotiation, judicial decree, or otherwise, then in determining such share the same standard shall be employed to the extent it is relevant and applicable.

d. **Partial Taking.** If less than the entire Project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance of any such proceeding, the condominium ownership hereunder shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award to be determined in the following manner. As soon as practicable the Association shall, reasonably and in good faith, allocate the Condemnation Award among compensation, damages, and other proceeds, and shall apportion the amounts so allocated among the Owners as follows: (i) total amount allocated to taking of, or injury to, the Common Elements shall be apportioned among the Owners in proportion to their respective undivided interests in the Common Elements, (ii) total amount allocated to severance damages shall be apportioned to those Condominium Units which were not taken or condemned, (iii) respective amounts allocated to the taking of, or injury to, a particular Unit and/or improvements an Owner had made within his own Unit shall be apportioned to the particular Condominium Unit involved, and (iv) amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances. If an allocation of the Condemnation Award is already established in the negotiation, judicial decree or otherwise, then in allocating the Condemnation Award the Association shall employ such allocation to the extent it is relevant and applicable. Any distribution of the Condemnation Award made pursuant to this Paragraph shall be made by checks payable jointly to the Owners and their Mortgagees.

e. **Distribution.** The Association shall as soon as practicable determine the share of the Condemnation Award to which each Owner is entitled. Such shares shall be paid into separate accounts and disbursed as soon as practicable, provided that in the event of a complete taking such distribution shall be made in the same manner as is provided in Paragraph 29.b.

f. **Mortgagee Notice.** The Association shall give timely notice to each First Mortgagee of the commencement of any condemnation or eminent domain proceedings and shall notify said First Mortgagees in the event of a taking of all or any part of the Common Elements, if the value of the Common Elements taken exceeds \$10,000.00.

g. **Reorganization.** If a partial taking results in the taking of a complete Unit, the Owner thereof automatically shall cease to be a member of the Association, and such Owner's interest in the Common Elements shall thereupon terminate, and the Association, as attorney-in-fact for such Owner, may take whatever action is necessary and execute such documents as are necessary to reflect such termination. Thereafter the Association shall



reallocate the ownership and assessment ratios determined in accordance with this Declaration according to the same principles employed in this Declaration at its inception, and shall submit such reallocation to the Owners and Eligible Mortgagees of the remaining Condominium Units for amendment of this Declaration as provided in Paragraphs 31.b and 32.a.

31. **Amendment and Termination of Declaration.**

a. **Duration of Declaration.** All of the provisions contained in this Declaration shall continue and remain in full force and effect until condominium ownership of the Project and this Declaration are terminated, revoked, or amended as hereinafter provided.

b. **Amendment and Termination.**

(1) Except as otherwise expressly allowed by this Declaration or Section 217 of the Act, any provision contained in this Declaration may be amended, or additional provisions may be added to this Declaration, only by a vote or written agreement of the Owners, as shown by the Records, representing an aggregate ownership interest of seventy-five percent (75%), or more, of the Common Elements. Without limiting the generality of the foregoing, such vote or written agreement of the Owners shall be required for any of the amendments referenced in Paragraph 32a below. Notwithstanding the foregoing, except as expressly allowed by this Declaration (including any amendment effected pursuant to Paragraph 4) or the Act, no amendment may create or increase special Declarant rights, increase the number of Units, or change the boundaries of any Unit or the allocated interests of a Unit, or the uses to which any Unit is restricted, in the absence of unanimous consent of the Owners. Further, so long as Declarant continues to own one (1) or more Condominium Units which it is holding for rental or sale, no rights of Declarant contained in this Declaration, including without limitation Declarant's Development Rights, may be amended or modified without the consent of Declarant. The consent(s) of any Junior Mortgagees shall not be required under the provisions of this Paragraph.

(2) Notwithstanding anything in Sub-Paragraph (1) above to the contrary, if Declarant determines that any amendments to this Declaration or any amendments to the Articles or Bylaws shall be necessary: (a) in order for existing or future Mortgages to be acceptable to any Agencies; (b) in order to clarify any apparently conflicting provisions; (c) to correct any mistakes or errors of a clerical nature resulting from typographical or similar errors; or (d) to correct technical errors for clarification, Declarant shall have and hereby specifically reserves the right and power to make and execute any such amendments without obtaining the approval of any Owners or Mortgagees. In addition, Declarant reserves the right, power and authority to make and execute those amendments authorized by Section 217 of the Act. At least ten days prior to the effective date of any amendment to this Declaration, Declarant shall notify all First Mortgagees of record of such amendment. Each such amendment by Declarant shall be made, if at all, by Declarant prior to the expiration of the Development Rights Period.

(3) Notwithstanding anything in Sub-Paragraph (1) to the contrary, no consent or agreement of Owners or Mortgagees shall be required in order to allow: (a) Declarant

to exercise its Development Rights provided it complies with the applicable provisions as set forth in this Declaration; or (b) the Owners to exercise their respective rights under Paragraph 4.

(4) All amendments to this Declaration must be prepared and recorded in compliance with the requirements of Section 217 of the Act.

c. **Effect of Provisions of Declaration.** Each provision of this Declaration, and any agreement, promise, covenant and undertaking to comply with each provision of this Declaration, and any necessary exception or reservation or grant of title, estate, right or interest to effectuate any provision of this Declaration, shall:

(1) Be deemed incorporated in each deed or other instrument by which any right, title or interest in the Project or in any Condominium Unit is granted, devised or conveyed, whether or not set forth or referenced in such deed or instrument;

(2) By virtue of acceptance of any right, title or interest in the Project or in any Condominium Unit by an Owner, be deemed accepted, ratified, adopted and declared as a personal covenant, shall be binding on such Owner and such Owner's heirs, personal representatives, successors and assigns and shall be deemed a personal covenant to, with and for the benefit of the Association but not to, with or for the benefit of any other Owner;

(3) Be deemed a real covenant by Declarant, for itself, its successors and assigns, and also an equitable servitude, running, in each case, as a burden with and upon the title to the Project and each Condominium Unit and, as a real covenant and also as an equitable servitude, shall be deemed a covenant and servitude for the benefit of the Project and each Condominium Unit; and

(4) Be deemed a covenant, obligation and restriction burdening and encumbering the title to the Project and each Condominium Unit in favor of the Association.

32. **Rights of First Mortgagees.** For purposes of this Paragraph 32, First Mortgagees requesting notice from the Association regarding any occurrence referenced in this Paragraph 32 or any proposed action that requires the consent of a specified percentage of First Mortgagees shall be referred to as "**Eligible Mortgagees.**" Subject to Paragraphs 4 and 31.b and the rights of Declarant provided for in this Declaration, but notwithstanding any other provisions in this Declaration to the contrary:

a. **Amendments of Condominium Instruments.** No material amendment shall be made to the Declaration, Articles or Bylaws of the Association (collectively, the "**Condominium Instruments**") without prior written notice of such amendment to all Eligible Mortgagees, and without the approval of Eligible Mortgagees representing at least fifty-one percent (51%) of the votes of the Units that are subject to Mortgages held by Eligible Mortgagees. A change to any of the provisions governing the following in the Condominium Instruments shall be considered "material" for purposes of this Paragraph 32.a: (i) voting rights; (ii) increases in Assessments for Common Expenses that raise the previously assessed amount by

more than 25%, or changes in the provisions governing Assessment liens or the priority of Assessment liens; (iii) any change in reserves for maintenance, repair, and replacement of Common Elements; (iv) responsibility for maintenance and repairs; (v) reallocation of interests in the Common Elements or rights to their use except as allowed in Paragraph 4; (vi) redefinition of any Unit boundaries or the exclusive easement rights appurtenant to any Unit, except as allowed in Paragraph 4; (vii) convertibility of Units into Common Elements or vice versa except as allowed under Paragraph 4; (viii) expansion or contraction of the Project, or the addition, annexation or withdrawal of property to or from the Project; (ix) hazard or fidelity insurance requirements; (x) imposition of any restrictions on the leasing of Units; (xi) imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit; (xii) a decision by the Association to establish self-management when professional management has previously been required by this Declaration or by any Eligible Mortgagee; (xiii) restoration or repair of the Project or Building (after a casualty or partial condemnation) in a manner other than that specified in the Condominium Instruments; (xiv) any action to terminate the legal status of the Project after substantial destruction or condemnation occurs; or (xv) any provisions that expressly benefit First Mortgagees. Any addition, deletion or amendment shall not be considered material if it is for the purpose of correcting technical errors or for clarification only. If an Eligible Mortgagee fails to submit a response to any written proposal for any such material amendment within 30 days after it receives notice of the proposal by certified or registered mail, return receipt requested, such Mortgagee's approval shall conclusively be deemed to have been given.

b. **Termination of Project.** The Owners may not terminate the legal status of the Project for reasons other than substantial destruction or condemnation of the Project without the approval of First Mortgagees representing at least eight-five percent (85%) of the votes of the Units that are subject to First Mortgages.

c. **Inspection; Notices of Meetings.** Any First Mortgagee shall be entitled to inspect the Condominium Instruments, books, records and financial statements relating to the Project during normal business hours, and upon written request shall be entitled to: (i) receive a copy of the annual financial statement of the Association for the preceding fiscal year of the Association; and (ii) written notice of all meetings of the Association, as well as the right to designate a representative to attend all such meetings. Any financial statement so provided to a First Mortgagee at its request shall be audited or reviewed by an independent certified public accountant if: (i) the Project contains 50 or more Units, in which case the cost of the audit or review shall be a Common Expense; or (ii) an Eligible Mortgagee requests it, in which case the Eligible Mortgagee shall bear the cost of the audit. Upon the written request of any of the Agencies which has an interest or prospective interest in any Unit, the Association shall prepare and furnish, within a reasonable time, an audited financial statement of the Association for the immediately preceding fiscal year.

d. **Other Notices.** The Association shall provide timely written notice to any Mortgagee (provided such Mortgagee has provided the Association with a written request for such notice and has notified the Association of its address and the unit number of the Unit on which it has, or insures or guarantees, the Mortgage) of: (i) any condemnation or casualty loss

that affects either a material portion of the Project or the Unit securing its Mortgage; (ii) any 60-day delinquency in the payment of assessments or charges owed by the Owner of any Unit on which it holds the Mortgage; (iii) a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association which is not replaced by a policy satisfying the requirements of this Declaration prior to the effective date of such lapse, cancellation or modification; and (iv) any proposed action that requires the consent of a specified percentage of the First Mortgagees. No provision in the Condominium Instruments shall be construed to give a Unit Owner or any other party priority over the rights of a First Mortgagee of a Unit with respect to distribution by the Association of insurance proceeds or a condemnation award for losses to or a taking of Units and/or Common Elements.

The provisions of this Paragraph 32 are in addition to any other rights of Mortgagees herein contained or provided under law. If any other Paragraph of this Declaration requires the approval of a higher percentage of the First Mortgagees than are required by this Paragraph 32, the percentage required by such other Paragraph shall control.

33. **Protection of Encumbrancer.** Subject to the provisions of Paragraph 27, no violation or breach of or failure to comply with any provision of this Declaration, and no action to enforce any such provision, shall affect, defeat, render invalid or impair the lien of any First Mortgage or any other lien on any Condominium Unit taken in good faith and for value and perfected by recording in the Records, prior to the time of the recording of an instrument setting forth the following: (a) a description of the Condominium Unit; (b) the name or names of the Owner or Owners of fee simple title to the Condominium Unit; and (c) notice of such violation, breach or failure to comply or action to enforce, affect, defeat, render invalid or impair either the title or interest of the holder of any such First Mortgage or other lien or the title or interest acquired by any purchaser upon foreclosure of any such First Mortgage or other lien. Any such purchaser on foreclosure shall take subject to this Declaration; provided, however, that violation or breach of, or failure to comply with, any provisions of this Declaration which occurred prior to the vesting of fee simple title in such purchaser shall not be deemed breaches or violations hereof or failures to comply herewith with respect to such purchaser, his heirs, personal representatives, successors or assigns.

34. **Reserved Development and Special Declarant Rights.**

a. **Reservation of Expansion Rights.** Declarant reserves the right for itself and any Successor Declarant to subject all or any part of the Expansion Property specified in Exhibit 4, if any, to the provisions of this Declaration and thereby expand the Property and create additional units up to the number of Units That May Be Included and to expand the Common Elements, provided however, that such additional Units and Common Elements shall be consistent with the Units and Common Elements initially subject to this Declaration in terms of quality of construction, and further provided that each Agency that holds, insures or guarantees any Mortgage in the Units subject to this Declaration at the time of expansion gives its prior written consent to the expansion. It is contemplated that additional Units which already exist on the Expansion Property will be committed to this Declaration, but Declarant and any Successor Declarant shall have no affirmative obligation to construct any additional Units nor to add the

Expansion Property to this Declaration. The expansion may be accomplished in stages by successive supplements or in one supplemental expansion in whatever order of development Declarant in its sole discretion, determines. Liens arising in connection with Declarant's ownership of, and construction of improvements upon, the Expansion Property, shall not adversely affect the rights of existing Owners or the priority of First Mortgages on Units already subject to this Declaration. Declarant shall not be obligated to expand the Project beyond the number of Units initially submitted to this Declaration. In the event that a portion of the Expansion Property is submitted to the provisions of this Declaration, Declarant shall retain the right to, but shall not be obligated to, submit any additional portion of the Expansion Property to the provisions of this Declaration. The rights of Declarant and any Successor Declarant, as described herein, shall apply to all Units which are added to this Declaration in accordance with these provisions relating to enlargement thereof. The recording of a Supplemental declaration or Supplemental Map shall not alter the amount of the Common Expenses assessed to a Unit prior to such recording.

b. **Addition of Unspecified Real Estate.** Subject to those restrictions set forth in Section 222 of the Act, Declarant reserves the right for itself and any Successor Declarant at any time and from time to time to subject unspecified real property to the provisions of this Declaration.

c. **Reservation of Withdrawal Rights.** Declarant reserves the right for itself and any Successor Declarant at any time and from time to time to withdraw from the provisions of this Declaration individual Units and/or Common Elements. In the event that a Unit or Units are withdrawn the allocated interests in the project shall be reallocated applying the formula specified in Section 3.b herein with voting allocation reallocated as specified above. In addition, the Declarant reserves the right to withdraw all or a portion of the real estate dedicated to this project. If all the real estate is subject to withdrawal, and the declaration does not describe separate portions of real estate subject to that right, none of the real estate may be withdrawn after a unit has been conveyed to a purchaser. If any portion of the real estate is subject to withdrawal, it may not be withdrawn after a unit in that portion has been conveyed to a purchaser.

d. **Other Reserved Rights.** Declarant reserves the right for itself and any Successor Declarant at any time and from time to time to: (a) complete improvements indicated on the plats and Maps; (b) maintain and relocate sales offices, management offices, signs advertising the Project and models, of any size, within one or more Units and within the General Common Elements so long as Declarant or Successor Declarant continues to be an Owner of a Unit or, if earlier, seven (7) years from the recording of this Declaration with the Clerk and Recorder; (c) subject the Project to a master association; (d) merge or consolidate the Project with a common interest community of the same form of ownership; and (e) appoint or remove any officer of the association or any Board of Directors member during the period of Declarant control as set forth in Section 18.d above.

e. **Termination of Rights.** The rights reserved to the Declarant for itself, its successors and assigns in this Section shall expire, unless sooner terminated as required by the

Act, seven (7) years from the date of recording this Declaration, unless such rights are (i) extended as allowed by law; or (ii) reinstated or extended by the Association, subject to whatever terms, conditions and limitations the Board of Directors may impose on the subsequent exercise of the rights by Declarant.

35. **Miscellaneous.**

a. **Supplemental to Law.** The provisions of this Declaration shall be in addition and supplemental to the Act and to all other provisions of law.

b. **Numbers and Genders.** Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

c. **Registration by Owner of Mailing Address.** Each Owner shall register his mailing address with the Association. All notices or demands intended to be served upon an Owner shall be delivered personally or sent by first class mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. If an Owner of a Unit fails to register his mailing address, such Owner's mailing address shall be deemed to be the mailing address of his Unit. All notices, demands or other notices intended to be served upon the Board of Directors of the Association or the Association shall be sent by certified mail, postage prepaid, to Amber Communities, Inc., 11940 E. Hampden Avenue, Suite 320, Aurora, Colorado 80014, agent for service for the Association, until such address is changed by a notice of address duly recorded with the office of the Secretary of State of Colorado.

d. **Successors and Assigns.** This Declaration shall be binding upon and shall inure to the benefit of Declarant, the Association and each Owner, and the heirs, personal representatives, successors and assigns of each of them.

e. **Severability.** All provisions of this Declaration are severable. Invalidity or unenforceability of any provision of this Declaration in whole or in part shall not affect the validity or enforceability of any other provision or any valid and enforceable part of a provision of this Declaration.

f. **Captions.** The captions and headings in this Declaration are for convenience only and shall not be considered in construing any provision of this Declaration.

g. **No Waiver.** Failure to enforce any provision of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration no matter how many violations or breaches occur.

h. **Sales and Construction Facilities and Activities of Declarant.**

(1) **Construction and Marketing Activities.** Notwithstanding any provision to the contrary contained herein, during the period of any renovation, construction and sale of the Condominium Units in the Project by Declarant (but until no later than the expiration

of the Development Rights Period), Declarant, its agents, employees and contractors shall be permitted to maintain, upon such portion of the Project as Declarant may choose, such facilities and to conduct such activities as, in the sole opinion of Declarant, may be reasonably required or convenient for or incidental to the renovation, construction, sale or rental of the Condominium Units. Such facilities may include, without limitation, a business office, construction management office, storage areas, construction storage areas, signs, model Units, sales office, construction office, parking areas and lighting and temporary parking facilities for all prospective tenants or purchasers of Units and for all contractors and laborers. In addition, Declarant, its agents, employees and contractors shall have the right of ingress and egress over any and all Units owned by Declarant and all of the Common Elements as in Declarant's discretion may be necessary with regard to the foregoing. Further, Declarant, its agents, employees and contractors shall have the right of ingress and egress in and through all Units owned by Declarant and all of the Common Elements during the period of the renovation, construction and/or sale of the Units for the purpose of any required or desired refurbishment, construction, maintenance or repair of such Units, the Building, or any part thereof.

(2) **Sales, Leasing and Management Activities.** Notwithstanding any provision to the contrary contained herein, for so long as Declarant owns any Units in the Project (but until no later than the expiration of the Development Rights Period), Declarant may use not more than 15 Units owned by it within the Project, and/or may use all or any portion of the Common Elements as a sales office or otherwise for the marketing of the Condominium Units, and/or as a management office and/or a leasing office for the Project, and/or as model units for the marketing of the Project. In no event may the aggregate square footage of the Units or other areas occupied for the purposes described in this Sub-Paragraph 35.h.(2) exceed 45,000 square feet. Declarant specifically reserves the right from time to time to relocate any or all sales offices, management offices, leasing offices and/or model units operated by it to other Units owned by Declarant or to the Common Elements.

i. **Conflict.** In the event of a conflict between the provisions of the Declaration and the Bylaws, the Declaration shall prevail except to the extent the Declaration is inconsistent with the Act. In the event of a conflict between provisions relating to the exercise of Development Rights by Declarant and provisions relating to Owners, including specifically restrictions on rights of Owners, provisions relating to the exercise of Development Rights shall prevail notwithstanding that Declarant is also an Owner of one or more Units.

j. **Act and Paragraph References.** All references to particular sections of the Act shall be to the corresponding section of Title 33, Article 33.3 of the Colorado Revised Statutes. If any such section is amended, supplemented or recodified, then the corresponding reference in this Declaration shall be to such section as so amended, supplemented or recodified. Unless the context otherwise clearly indicates, references in this Declaration to particular Paragraphs or Sub-Paragraphs shall refer to the corresponding provision of this Declaration.

k. **Arbitration.** Any claim, controversy, or dispute over the imposition, amount or any other aspect of a Reimbursement Assessment, or over such other matters as the Association and the affected party may mutually agree, shall be resolved by binding arbitration in

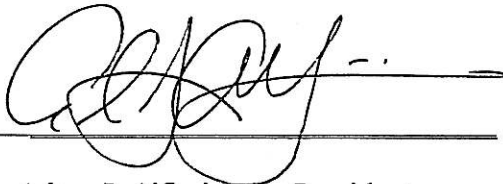




**MORTGAGEE'S STATEMENT**

The undersigned, holder of a Deed of Trust dated September 19, 2003, and recorded September 22, 2003, at Reception No. B3210481, in the office of the Clerk and Recorder of Arapahoe County, Colorado, as amended, modified and supplemented from time to time (the 'Deed of Trust'), hereby consents to the recording of this Declaration, and agrees and acknowledges that any foreclosure, enforcement or other remedy available to the undersigned under the Deed of Trust shall not void or otherwise impair the validity of the Declaration and the covenants running with the land described therein.

EXECUTED by the undersigned on the 22<sup>nd</sup> day of July, 2004.




BY: Adam J. Alfieri, Vice President  
First Community Bank,  
a division of First State Bank N.M.

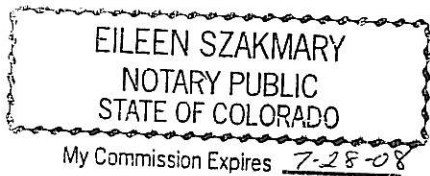
State of Colorado            )  
  ) ss.  
County of Arapahoe        )


The foregoing instrument was acknowledged before me this 22<sup>nd</sup> day of July, 2004, by Adam J. Alfieri as Vice President of First Community Bank.

Witness my hand and official seal.

My commission expires 7-28-08

  
Notary Public

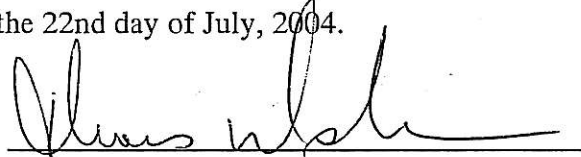


Approved as to form 

**MORTGAGEE'S STATEMENT**

The undersigned, holder of a Deed of trust dated September 19, 2003, and recorded September 22, 2003, at Reception No. B3210484, in the office of the Clerk and Recorder of Arapahoe County, Colorado, as amended, modified and supplemented from time to time (the "Deed of Trust"), hereby consents to the recording of this Declaration, and agrees and acknowledges that any foreclosure, enforcement or other remedy available to the undersigned under the Deed of Trust shall not void or otherwise impair the validity of the Declaration and the covenants running with the land described therein.

EXECUTED by the undersigned on the 22nd day of July, 2004.



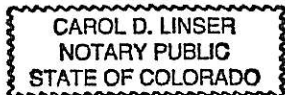
By: Thomas R. Kowalski  
Its: Administrator

State of Colorado            )  
  ) ss.  
County of Arapahoe        )

The foregoing instrument was acknowledged before me this 22nd day of July, 2004, by Thomas R. Kowalski as Administrator of Realtek Company Employees Profit Sharing Plan.

Witness my hand and official seal.

My commission expires 8/14/2005



MY COMMISSION EXPIRES 8/14/2005

[SEAL]


  
\_\_\_\_\_  
Notary Public

EXHIBIT 5

LIMITED COMMON ELEMENTS

Parking spaces, patios, and other areas as allocated on deed and condominium map.

EXHIBIT 1

LEGAL DESCRIPTION

See attached.

LEGAL DESCRIPTION

A PORTION OF LOT 1, BLOCK 1, SOUTHCREEK SUBDIVISION FILING NO. 6 AS RECORDED AT RECEPTION NO. B3208724 IN THE LAND RECORDS OF ARAPAHOE COUNTY, COLORADO, LOCATED IN THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 5 SOUTH, RANGE 00 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF ARAPAHOE, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 32, WHENCE THE NORTH QUARTER CORNER THEREOF BEARS  $N89^{\circ}49'00''E$ , THENCE  $S61^{\circ}41'26''E$ , A DISTANCE OF 1438.86 FEET TO A POINT LOCATED ON THE SOUTHERLY LINE OF JAMISON AVENUE (80 FOOT WIDE) AND THE POINT OF BEGINNING;

THENCE THE FOLLOWING THREE(3) COURSES ALONG SAID SOUTHERLY LINE;

1. 223.62 FEET ALONG SAID SOUTHERLY LINE AND A CURVE TO THE LEFT CONTAINING A RADIUS OF 510.00 FEET, AN INTERIOR ANGLE OF  $25^{\circ}07'22''$ , AND A CHORD OF 221.63 FEET WHICH BEARS  $S82^{\circ}04'40''E$ , TO A POINT;
2.  $N85^{\circ}21'38''E$ , A DISTANCE OF 57.18 FEET TO A POINT OF CURVATURE;
3. 22.42 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT CONTAINING A RADIUS OF 470.00 FEET, AN INTERIOR ANGLE OF  $02^{\circ}44'00''$ , AND A CHORD OF 22.42 FEET WHICH BEARS  $N86^{\circ}43'38''E$  TO A POINT OF NON-TANGENT CURVATURE;
- THENCE DEPARTING SAID SOUTHERLY LINE AND RUNNING THROUGH SAID LOT 1, BLOCK 1 THE FOLLOWING THIRTEEN (13) COURSES:
  1. 16.65 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT CONTAINING A RADIUS OF 25.00 FEET, AN INTERIOR ANGLE OF  $38^{\circ}10'05''$ , AND A CHORD OF 16.35 FEET WHICH BEARS  $S22^{\circ}56'53''W$ , TO A POINT;
  2.  $S03^{\circ}52'51''W$ , A DISTANCE OF 159.69 FEET TO A POINT;
  3.  $N86^{\circ}06'10''W$ , A DISTANCE OF 162.70 FEET TO A POINT;
  4.  $S03^{\circ}55'39''W$ , A DISTANCE OF 137.74 FEET TO A POINT;
  5.  $N86^{\circ}06'10''W$ , A DISTANCE OF 47.74 FEET TO A POINT;
  6.  $N03^{\circ}53'50''E$ , A DISTANCE OF 115.96 FEET TO A POINT;
  7.  $S86^{\circ}06'10''E$ , A DISTANCE OF 23.47 FEET TO A POINT;
  8.  $N03^{\circ}53'50''E$ , A DISTANCE OF 21.79 FEET TO A POINT;
  9.  $N86^{\circ}06'10''W$ , A DISTANCE OF 97.86 FEET TO A POINT;
  10.  $N21^{\circ}51'15''W$ , A DISTANCE OF 51.49 FEET TO A POINT OF NON-TANGENT CURVATURE;
  11. 17.85 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT CONTAINING A RADIUS OF 25.00 FEET, AN INTERIOR ANGLE OF  $40^{\circ}54'05''$ , AND A CHORD OF 17.47 FEET WHICH BEARS  $N50^{\circ}08'35''W$  TO A POINT;
  12.  $N18^{\circ}40'51''E$ , A DISTANCE OF 109.45 FEET TO A POINT OF CURVATURE;
  13. 17.38 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT CONTAINING A RADIUS OF 25.00 FEET, AN INTERIOR ANGLE OF  $39^{\circ}49'20''$ , AND A CHORD OF 17.03 FEET WHICH BEARS  $N01^{\circ}25'39''W$  TO THE POINT OF BEGINNING.

CONTAINING 56176 SQUARE FEET OR 1.2896 ACRES OF LAND, MORE OR LESS.

EXHIBIT 2

PERCENTAGE INTERESTS IN COMMON  
ELEMENTS

<u>ADDRESS</u>	<u>% INTEREST</u>
15700 E. Jamison Dr. #1-101	1/24
15700 E. Jamison Dr. #1-102	1/24
15700 E. Jamison Dr. #1-103	1/24
15700 E. Jamison Dr. #1-104	1/24
15700 E. Jamison Dr. #1-105	1/24
15700 E. Jamison Dr. #1-106	1/24
15700 E. Jamison Dr. #1-107	1/24
15700 E. Jamison Dr. #1-108	1/24
15700 E. Jamison Dr. #1-201	1/24
15700 E. Jamison Dr. #1-202	1/24
15700 E. Jamison Dr. #1-203	1/24
15700 E. Jamison Dr. #1-204	1/24
15700 E. Jamison Dr. #1-205	1/24
15700 E. Jamison Dr. #1-206	1/24
15700 E. Jamison Dr. #1-207	1/24
15700 E. Jamison Dr. #1-208	1/24
15700 E. Jamison Dr. #1-301	1/24
15700 E. Jamison Dr. #1-302	1/24
15700 E. Jamison Dr. #1-303	1/24
15700 E. Jamison Dr. #1-304	1/24
15700 E. Jamison Dr. #1-305	1/24
15700 E. Jamison Dr. #1-306	1/24
15700 E. Jamison Dr. #1-307	1/24
15700 E. Jamison Dr. #1-308	1/24

EXHIBIT 3  
EASEMENTS AND LICENSES

See attached.

ALTA COMMITMENT

SCHEDULE B-2

(Exceptions)

Our Order No. FBS70047815-2

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

1. Rights or claims of parties in possession not shown by the public records.
2. Easements, or claims of easements, not shown by the public records.
3. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, and any facts which a correct survey and inspection of the premises would disclose and which are not shown by the public records.
4. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.
5. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.
6. Taxes and assessments not yet due or payable and special assessments not yet certified to the Treasurer's office.
7. Any unpaid taxes or assessments against said land.
8. Liens for unpaid water and sewer charges, if any.
9. EXISTING LEASES AND TENANCIES, IF ANY.
10. ANY WATER RIGHTS OR CLAIMS OR TITLE TO WATER IN, ON OR UNDER THE LAND, WHETHER OF RECORD OR NOT.  
  
NOTE: RULING AND DECREE OF THE WATER COURT RECORDED FEBRUARY 25, 1983 IN BOOK 3803 AT PAGE 653.
11. EASEMENT GRANTED TO THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY, FOR TELEPHONE AND TELEGRAPH LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED JUNE 01, 1937, IN BOOK 387 AT PAGE 88.
12. ANY TAX, LIEN, FEE, OR ASSESSMENT BY REASON OF INCLUSION OF SUBJECT PROPERTY IN THE ARAPAHOE WATER & SANITATION DISTRICT, AS EVIDENCED BY INSTRUMENT RECORDED MARCH 21, 1985, IN BOOK 4396 AT PAGE 306.
13. ANY TAX, LIEN, FEE, OR ASSESSMENT BY REASON OF INCLUSION OF SUBJECT PROPERTY IN THE PARKER JORDAN METROPOLITAN DISTRICT, AS EVIDENCED BY INSTRUMENT RECORDED APRIL 25, 1985, IN BOOK 4423 AT PAGE 93 AND TOWNSHIP



ALTA COMMITMENT

SCHEDULE B-2

(Exceptions)

Our Order No. FBS70047815-2

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

3, 1985 IN BOOK 4431 AT PAGE 486.

NOTE: RESOLUTION OF THE BOARD OF DIRECTORS OF THE PARKER JORDAN METROPOLITAN DISTRICT RECORDED APRIL 20, 1998 UNDER RECEPTION NO. A8057421 AND AMENDMENT THERETO RECORDED OCTOBER 11, 2001 UNDER RECEPTION NO. B1173653.

14. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN PARKER JORDAN METROPOLITAN DISTRICT FACILITIES FEE AGREEMENT RECORDED FEBRUARY 26, 1998 UNDER RECEPTION NO. A8025722 AND RE-RECORDED MARCH 16, 1998 UNDER RECEPTION NO. A8036345 AND RE-RECORDED AUGUST 20, 1998 UNDER RECEPTION NO. A8132368.

NOTE: FIRST AMENDMENT TO SAID AGREEMENT RECORDED AUGUST 5, 1999 UNDER RECEPTION NO. A9127973 AND SECOND AMENDMENT RECORDED NOVEMBER 18, 1999 UNDER RECEPTION NO. A9184126.

15. ANY TAX, LIEN, FEE, OR ASSESSMENT BY REASON OF INCLUSION OF SUBJECT PROPERTY IN THE CASTLEWOOD FIRE PROTECTION DISTRICT, AS EVIDENCED BY INSTRUMENT RECORDED JUNE 24, 1998, UNDER RECEPTION NO. A8096321.
16. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN MDU SERVICE AGREEMENT RECORDED NOVEMBER 06, 1998 UNDER RECEPTION NO. A8178749.
17. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN COVENANT FOR LANDSCAPING, FENCING AND SIGNAGE SOUTHCREEK RECORDED JANUARY 14, 1999 UNDER RECEPTION NO. A9007638.

NOTE: FIRST AMENDMENT THERETO RECORDED JULY 6, 1999 UNDER RECEPTION NO. A9110257.

18. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN STANDARD AVIGATION AND HAZARD EASEMENT RECORDED APRIL 02, 1999 UNDER RECEPTION NO. A9054852.

ALTA COMMITMENT

SCHEDULE B-2

(Exceptions)

Our Order No. FBS70047815-2

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

19. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN PERMANENT SLOPE EASEMENT AGREEMENT WITH THE COUNTY OF ARAPAHOE, COLORADO RECORDED SEPTEMBER 03, 2002 UNDER RECEPTION NO. B2162841.
  20. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN TEMPORARY CONSTRUCTION EASEMENT WITH THE COUNTY OF ARAPAHOE RECORDED SEPTEMBER 03, 2002 UNDER RECEPTION NO. B2162842.
  21. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN AGREEMENT RELATING TO THE SUBDIVISION AND DEVELOPMENT OF SOUTHCREEK SUBDIVISION FILING NO. 6 RECORDED SEPTEMBER 10, 2003 UNDER RECEPTION NO. B3202374.
  22. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN TRAFFIC SIGNAL ESCROW AGREEMENT RECORDED SEPTEMBER 10, 2003 UNDER RECEPTION NO. B3202375.
  23. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE RECORDED PLAT OF SOUTHCREEK SUBDIVISION FILING NO. 6.
  24. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN SUBDIVISION IMPROVEMENT AGREEMENT AND RESTRICTION ON CONVEYANCE RELATING TO THE SUBDIVISION AND DEVELOPMENT OF SOUTHCREEK SUBDIVISION FILING NO. 6 RECORDED SEPTEMBER 30, 2003 UNDER RECEPTION NO. B3215034.
  25. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN TRAFFIC SIGNAL ESCROW AGREEMENT SOUTHCREEK SUBDIVISION FILING NO. 6 RECORDED SEPTEMBER 30, 2003 UNDER RECEPTION NO. B3215035.
  26. DEED OF TRUST DATED SEPTEMBER 19, 2003, FROM AMBER COMMUNITIES, INC., A COLORADO CORPORATION TO THE PUBLIC TRUSTEE OF ARAPAHOE COUNTY FOR THE USE OF FIRST COMMUNITY BAK TO SECURE THE SUM OF \$3,000,000.00 RECORDED SEPTEMBER 22, 2003, UNDER RECEPTION NO. B3210481.
- DISBURSER'S NOTICE IN CONNECTION WITH SAID DEED OF TRUST WAS RECORDED SEPTEMBER 22, 2003, UNDER RECEPTION NO. B3210482.

ALTA COMMITMENT

SCHEDULE B-2

(Exceptions)

Our Order No. FBS70047815-2

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

MODIFICATION OF SAID DEED OF TRUST RECORDED \_\_\_\_\_, 2004 UNDER  
RECEPTION NO. \_\_\_\_\_.

NOTE: THIS EXCEPTION WILL BE SHOWN IN SCHEDULE "A" OF THE POLICY TO BE  
ISSUED AS THE INSURED DEED OF TRUST.

27. FINANCING STATEMENT WITH FIRST COMMUNITY BANK, THE SECURED PARTY, RECORDED  
SEPTEMBER 22, 2003, UNDER RECEPTION NO. B3210483.
28. DEED OF TRUST DATED SEPTEMBER 19, 2003, FROM AMBER COMMUNITIES, INC., A  
COLORADO CORPORATION TO THE PUBLIC TRUSTEE OF ARAPAHOE COUNTY FOR THE USE  
OF REALTEK COMPANY EMPLOYEE'S PROFIT SHARING PLAN TO SECURE THE SUM OF  
\$600,000.00 RECORDED SEPTEMBER 22, 2003, UNDER RECEPTION NO. B3210484.

NOTE: UPON RECORDATION OF A FULL SUBORDINATION AGREEMENT, THIS EXCEPTION  
WILL BE SHOWN IN SCHEDULE B-II OF THE POLICY TO BE ISSUED.

29. FINANCING STATEMENT WITH REALTEK COMPANY EMPLOYEE'S PROFIT SHARING PLAN,  
THE SECURED PARTY, RECORDED SEPTEMBER 22, 2003, UNDER RECEPTION NO.  
B3210485.

NOTE: UPON RECORDATION OF A FULL SUBORDINATION AGREEMENT, THIS EXCEPTION  
WILL BE SHOWN IN SCHEDULE B-II OF THE POLICY TO BE ISSUED.

30. DEED OF TRUST DATED DECEMBER 15, 2003, FROM AMBER COMMUNITIES, INC., A  
COLORADO CORPORATION TO THE PUBLIC TRUSTEE OF ARAPAHOE COUNTY FOR THE USE  
OF PARKER JORDAN METROPOLITAN DISTRICT TO SECURE THE SUM OF \$90,000.00  
RECORDED DECEMBER 31, 2003, UNDER RECEPTION NO. B3276401.
31. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN  
FACILITY FEES AGREEMENT WITH AMBER COMMUNITIES, INC. RECORDED DECEMBER  
31, 2003 UNDER RECEPTION NO. B3276402.

EXHIBIT 4

ADDITIONAL PROPERTY

Lot 1, Block 1, and Tract A  
Southcreek Subdivision  
Filing No. 6  
Arapahoe County, Colorado